Motion to dismiss
to be heard with merits
Filed
Argued 11-184 Submitted
Nov 4 1879

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. 855 ~~366 260~~ 42

WILLIAM T. AYERS, EXECUTOR OF CHARLES P. GAGE, DECEASED, APPELLANT,

vs.

THE CITY OF CHICAGO, GEORGE TAYLOR, DAVID A. GAGE, AND ELIZA M. GAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 16, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 856.

WILLIAM T. AYERS, EXECUTOR OF CHARLES P. GAGE, DECEASED, APPELLANT,

vs.

THE CITY OF CHICAGO, GEORGE TAYLOR, DAVID A. GAGE, AND ELIZA M. GAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Thursday, the 28th day of October, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundredth year.

WILLIAM H. BRADLEY, *Clerk.*

THE CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, GEORGE Taylor, and William T. Ayers, exr., &c. } Chancery. Original bill.

and

WILLIAM T. AYERS, EXR., &C.,
vs.
THE CITY OF CHICAGO, DAVID A. GAGE, ELIZA M. Gage, and George Taylor. } Cross-bill.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, on the 1st day of May, A. D. 1875, came said William T. Ayers, exr., &c., by Messrs. Fuller and Smith, his solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the
2 district aforesaid, his bond for costs, and at the same time filed in said clerk's office a transcript of the record of the proceedings had in the superior court of Cook County, in the State of Illinois, in said entitled cause, which said bond and transcript are respectively in the words and figures following, to wit:

Bond for costs.

In United States circuit court, northern district of Illinois.

CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, GEORGE Taylor, Wm. T. Ayres. } Bill.

WM. T. AYRES
vs.
CITY OF CHICAGO, DAVID A. GAGE, ELIZA M. Gage, George Taylor. } Cross-bill.

We hereby enter ourselves security for costs in the above-entitled bill, and cross-bill, and acknowledge ourselves bound to pay or cause to be paid all costs which have accrued or may accrue in this action either to the opposite party or to any of the officers of this court in pursuance of the laws of the United States.

Dated this 1st day of May, A. D. 1875.

FULLER AND SMITH.

(Endorsed:) Filed May 1, 1875. Wm. H. Bradley, clk.

3 UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Pleas before the honorable Samuel M. Moore, one of the judges of the superior court of Cook County, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook County, begun and holden at the court-house in the city of Chicago, in said county and State, on the first Monday, being the fifth day of April, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

Present, the honorable Samuel M. Moore, judge of the superior court of Cook County; Charles H. Reed, prosecuting attorney; Francis Agnew, sheriff of Cook County.

Attest:

ALEXANDER T. STEVENSON, *Clerk.*

4 Be it remembered that, heretofore, to wit, on the twentieth day of October, in the year of our Lord one thousand eight hundred and seventy-four, the City of Chicago, by T. Lyle Dickey, its solicitor, filed in the office of the clerk of the superior court of Cook County its certain bill of complaint, which is in words and figures, as follows, to wit:

In the superior court of Cook County—November term, A. D. 1874.

STATE OF ILLINOIS,
Cook County, ss:

To the honorable the judges of the superior court of Cook County, in chancery sitting:

Your orator, the City of Chicago, brings this bill of complaint, and respectfully shows to the honorable the judges of the superior court of Cook County:

That, on or about the 16th day of December, 1873, David A. Gage, of the county of Cook and city of Chicago, who had before that time been treasurer of said city of Chicago, was indebted to the city of Chicago in a large amount of money, to wit, in about the sum of five hundred and seven thousand seven hundred and four dollars ($507,704) for
5 moneys before that time belonging to the city of Chicago, which had been received by him as the treasurer of said city; that his term of office as such treasurer had expired; his successor had been elected and qualified, and it became and was his duty to pay over to his successor, the treasurer of said city of Chicago, for the use of said city, the amount of said indebtedness, but that he neglected, failed, and refused so to do.

Your orator further shows that, on or about the 27th day of December, 1873, said David A. Gage, being so indebted to the city of Chicago in about the sum of five hundred and seven thousand seven hundred and four dollars ($507,704) as a former treasurer of said city of Chicago, made and executed (together with Eliza M. Gage, his wife,) and delivered to George Taylor, as a trustee, a certain trust-deed, signed and sealed by said David A. Gage and said Eliza M. Gage, and dated the 27th day of December, 1873, and which was delivered by them about that time, the execution of which was duly acknowledged by them, respectively, on that day before a notary public, which deed was afterwards filed for record in the office of the recorder of deeds in and for

said Cook County, and was soon after recorded in record-book, page 357, a copy of which deed of trust is hereto attached (as a part of this bill of complaint) marked "Exhibit A."

6 Your orator further shows unto your honors that, by said deed of trust, said David A. Gage and Eliza M. Gage did grant, bargain, sell, and convey to the said George Taylor, as such trustee, and to his successor or successors in said trust, and to his assigns, all the following-described lots, tracts, pieces, and parcels of land, situate, lying, and being in the county of Cook, and State of Illinois, that is to say, the northeast quarter of section twenty-five, (25,) township thirty-nine (39) north, of range twelve (12) east third prinsipal meridian; also lot one, (1,) in the partition by commissioners appointed by the circuit court of Cook County, Illinois, of the west part of the northwest quarter and the west part of the *north*west quarter of section thirty, (30,) township thirty-nine (39) north, of range 13 east of the third principal meridian—the said two pieces or tracts of lands containing together two hundred and fifty-four (254) acres, be the same more or less; also all the right, title, and interest of the said parties of the first part, in and to section one, (1,) in township thirty-nine (39) north, of range twelve (12) east of the third principal meridian, being about thirty (30) acres of land in said section, for the more particular description of which reference is hereby made to recorded conveyances thereof to said David A. Gage; also lot No. four, (4,) in block number two, (2,) in the subdivision of the south one hundred and seventy-seven

7 feet and six-tenths feet ($177\frac{6}{10}$) of Clark's addition to Chicago, being the premises upon which stand stone-front dwelling houses numbers 604 and 606, Michigan avenue, in the city of Chicago; also the undivided half of lot number one, (1,) in block number ninety-one, (91,) in the school-section addition to Chicago, in the city of Chicago, the whole of said lot being subject to an encumbrance of twenty-five thousand dollars, ($25,000,) together with all and singular the privileges and appurtenances thereunto belonging, or in any wise appertaining.

Your orator further shows unto your honor that by and in said deed of trust it was recited that said conveyance was made for the better securing the city of Chicago against any loss on account of indebtedness of said David A. Gage, late treasurer of the said city, and in trust for the following purposes, to wit: to take the possession, charge, management, and control of all the said lots, tracts, pieces, and parcels of land, and each and every part thereof, with the appurtenances, and to collect the rents, profits, and income of the same, and to pay therefrom and from the proceeds of the sales thereof all taxes and assessments levied and assessed thereon: also, insurances on buildings and the reasonable cost and expenses of the management of the premises

8 hereby conveyed during the continuance of this trust, and, under the direction and with the concurrence of the comptroller of the city of Chicago, such concurrence to be evidenced by the signature of said comptroller to the deed of conveyance, and as soon as the same could be done to the interests of all concerned, to sell and convey the said premises, or any part thereof, or so much thereof as might be required, upon such terms as to said trustee and to the comptroller of said city might seem best, and to make, sign, acknowledge, and deliver a good and sufficient deed or deeds of the parts so sold to the purchaser or purchasers thereof for the uses and purposes in said trust-deed thereinafter expressed, and receive the proceeds of any such sale or sales, and with and out of the net rents, profits, and income of the premises and the proceeds of such sale or sales, to pay the same from time to

time, as received, into the treasury of said city of Chicago, in liquidation pro tanto of whatever sum or sums there were or should be found to be due and owing by the said David A. Gage to said city until the whole should be paid. And it was further provided in and by said deed of trust, that in case said net rents and profits, income, and proceeds of sale should be insufficient for said purpose, then to apply the said net rents, income, and proceeds of said sale in satisfaction of such parts of said indebtedness as said comptroller should deem for the interests of
9 said city until the whole should be expended; and said deed was in and by said conveyance declared to be upon the further trust that, upon the payment and satisfaction of all of said indebtedness, either with or without the proceeds of said property, or otherwise, to convey to said David A. Gage, his heirs or assigns, all of the said premises which might be left unsold after the full payment of said indebtedness, and to pay over to said David A. Gage, his heirs or assigns, any surplus proceeds derived in any manner from the said premises, or any part thereof, after deducting therefrom all just and proper charges and expenses attending the execution of the trust, including a fair and proper compensation to said trustee for his services.

Your orator further shows that in and by said deed of trust said David A. Gage and said Eliza M. Gage did expressly waive and release any and all right, benefit, privilege, advantage, and exemption, under and by virtue of any of the statutes of Illinois, providing for exemption of homesteads from sale on execution or otherwise. And it was further provided in and by said deed of trust that, in case said real estate should not be sold in accordance with the provisions set forth in said deed within the period of eight months from the date thereof, then the comptroller should have the power to order a peremptory sale thereof
10 on such terms as to him should seem best for the interests of said city of Chicago.

Your orator further showeth unto your honor that said George Taylor accepted the said trust, and endorsed his acceptance thereof upon said deed of trust, on or about the 30th day of December, 1873; and afterwards, by virtue of said deed of trust, took possession of most if not all of said trust-property mentioned in said deed, and that afterwards, out of the rents, profits, or other proceeds of said trust-property or from moneys derived from said David A. Gage, said trustee paid over to said city of Chicago in liquidation pro tanto of so much of the said indebtedness of said David A. Gage, on or about the 8th April, 1874, the sum of twenty thousand dollars, ($20,000); and afterwards, on or about the 25th August, 1874, the sum of five thousand dollars ($5,000) in all making the sum of said payments twenty-five thousand dollars; and your orator claims that there is now due and owing and unpaid from said David A. Gage, as such late treasurer of the city of Chicago, the said sum of five hundred and seven thousand seven hundred and four dollars, ($507,704,) and interest thereon at the rate of six per cent. from the sixteenth day of December, A. D. 1873, less the amount of payments above specified.

Your orator further shows unto your honors that the said
11 George Taylor has not proceeded to sell any of said real estate except the premises described in said deed of trust as stone-front dwelling-house number 604, on Michigan avenue, and the grounds occupied by and attached to said dwelling, being twenty-six feet front on said street, and being part of a subdivision of Clark's addition to Chicago mentioned in said deed, which property your orator alleges was sold for twenty thousand dollars in cash.

Your orator further shows that said period of eight months mentioned in said deed of trust has long since elapsed, and since the expiration of that period, said trustee, George Taylor, has been ordered by S. S. Hayes, the comptroller of said city of Chicago, to proceed to make peremptory sale of said property mentioned in said trust-deed for cash, or so much thereof as may be necessary, to pay said city, over and above the expenses of said trust, the full amount of said indebtedness of said Gage to said city as above set forth, yet your orator shows that Taylor neglects and refuses to proceed further in making sale of said property, or any part thereof, without an order of court directing him so to do.

Your orator therefore prays that said David A. Gage and Eliza M. Gage, his wife, and said George Taylor, may be made parties defendant hereto, and may be summoned, and may be required to answer
12 each and every allegation of this, your orator's bill, but not under oath, each of their respective oaths in that regard being hereby expressly waived.

And your orator prays that upon a final hearing the amount of said indebtedness of said David A. Gage, as such former treasurer, may be ascertained, fixed, and adjudged, and that by decree of this court said George Taylor, as such trustee, may be directed and ordered to proceed to the full execution of said trust, and that he be directed and ordered to proceed to sell said property, or so much of the same as may be necessary, upon such terms as to your honors may seem fit and just, and pay over to your orator the proceeds thereof, or so much thereof as shall fully pay and satisfy all of said indebtedness and interest thereon, and that your honors will grant unto your orator such other and further relief and aid as shall seem to your honors just and proper, as your orator will ever pray, etc.

THE CITY OF CHICAGO,
By S. S. HAYES,
Comptroller of the City of Chicago.

T. LYLE DICKEY,
Counsel to the Corporation, Sol'r for Complainant.

13 (Copy.)

Exhibit A attached to the bill as part thereof.

CITY OF CHICAGO }
vs.
D. A. GAGE ET AL. }

This indenture, made and entered into this twenty seventh day of December, in the year of our Lord one thousand eight hundred and seventy-three, (A. D. 1873,) by and between David A. Gage and Eliza M., his wife, of the city of Chicago, in the county of Cook, and State of Illinois, of the first part, and George Taylor, of the same place, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar to them in hand paid, the receipt of which is hereby acknowledged, and of the special trusts hereby created to be faithfully executed by the said party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part, his successor and successors, in trust and assigns, all the following-described lots, tracts, pieces, and parcels of land situate, lying, and being in the county of Cook, and

State of Illinois; that is to say, the northeast quarter of section twenty-five, (25,) township thirty-nine (39) north, of range twelve (12) east, of the third principal meridian.

14 Also, lot one (1) in the partition, by commissioners appointed by the circuit court of Cook County, Illinois, of the west part of the northwest quarter, and the west part of the southwest quarter of section thirty, (30,) township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian—the said two pieces or tracts of land containing together two hundred and fifty-four (254) acres, be the same more or less.

Also, all the right, title, and interest of the said parties of the first part in and to section one, (1,) in township thirty-nine (39) north, of range twelve (12) east, of the third principal meridian, being about thirty (30) acres of land in said section, for a more particular description of which reference is hereby made to recorded conveyances thereof to said David A. Gage. Also, lot number four, (4,) in block number two, (2,) in the subdivision of the south one hundred and seventy-seven & six-tenths ($177\frac{6}{10}$) feet of Clarke's addition to Chicago, being the premises upon which now stand stone-front dwelling-houses No. 604 & 606, Michigan avenue, in the city of Chicago.

Also, the undivided half of lot number one, (1,) in block number ninety-one, (91,) in the school section addition to Chicago, in the city of Chicago, the whole of said lot being subject to an incumbrance of twenty-five thousand dollars, ($25,000.00,) together with all and singular

15 the privileges and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the same, and all the right, title, interest, and claim of the said parties of the first part therein, unto the said party of the second part, his successor and successors in trust, and assigns.

This conveyance is made for the better securing the city of Chicago against any loss on account of indebtedness of said David A. Gage as late treasurer of the said city, and in trust for the following purposes, viz: To take the possession, charge, management, and control of all the said lots, tracts, pieces, and parcels of land, and each and every part thereof, with the appurtenances, and to collect the rents, profits, and income of the same, and to pay therefrom, or from the proceeds of the sales thereof, all taxes and assessments levied and assessed thereon; also insurance on buildings, and the reasonable costs and expenses of the management of the premises hereby conveyed during the continuance of this trust. And under the direction and with the concurrence of the comptroller of the city of Chicago, such concurrence to be evidenced by the signature of said comptroller to the deed of conveyance, and as soon as the same can be done to the interest of all concerned, to sell and convey the said premises or any part of the same, or so much thereof as may be required, upon such terms as to said trustee

16 and the comptroller of said city may seem best, and to make, sign, acknowledge, and deliver good and sufficient deed or deeds of all the parts so sold, to the purchaser or purchasers thereof, for the uses and purposes hereinafter expressed, and to receive the proceeds of any such sale or sales; and with and out of the net rents, profits, and income of said premises and the proceeds of such sale or sales, to pay the same from time to time as received, into the treasury of said city of Chicago, in liquidation, pro tanto, of whatever sum or sums are or shall be found to be due and owing by said David A. Gage to said city, until the whole shall be paid; and, in case the said net rents, profits, income, and proceeds of sales shall be insufficient for this purpose, then to

apply the said net rents, profits, income, and proceeds of sale in satisfaction of such parts of said indebtedness as said comptroller shall deem for the interest of said city, until the whole shall be expended.

And upon the further trust that upon the payment and satisfaction of all of said indebtedness, eith' with or out of the proceeds of said property or otherwise, to reconvey to the said David A. Gage, his heirs or assigns, all of the said premises which may be left after the full payment of said indebtedness, then remaining unsold, and to pay over to said David A. Gage, his heirs or assigns, any surplus proceeds, in any manner derived from the said premises or any part thereof, after deducting therefrom all just and proper charges and expenses attending the
17 execution of this trust, including a fair and reasonable compensation to said trustee for his services in the premises: Provided, however, (and it is expressly agreed by the said David A. Gage,) That this conveyance is not to be in any sense a satisfaction of any part of said indebtedness, nor shall the same be taken as cause for any delay or interference with any other measures said city may have taken or may take to secure or to collect said indebtedness or any part thereof.

And the said parties of the first part hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption, under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

And the said David A. Gage, for himself, his heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, his legal representatives or successor in trust, that, at the time of the ensealing and delivery hereof, he, the said David A. Gage, is well seized of said premises in fee simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same on manner aforesaid, and that the same are free and clear from all liens, taxes, assessments, and incumbrances whatever except as hereinbefore stated.

18 And it is further agreed and specially understood that, in case of the death, resignation, removal from the said city of Chicago, or inability to act of the said party of the second part, then John De Roven, of the said city of Chicago, shall be, and hereby is, appointed and made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

In case said real estate shall not be sold in accordance with the provisions hereinbefore set forth within the period of eight months from the date hereof, then said comptroller shall have the power to order a peremptory sale thereof on such terms as to him shall seem best for the interests of the said city of Chicago.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signed) D. A. GAGE. [SEAL.]
(Signed) ELIZA M. GAGE. [SEAL.]

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Charles O. Henthorn, notary public in and for and residing in said city of Chicago, in the county and State aforesaid, do hereby cer-
19 tify that David A. Gage and Eliza M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person

and acknowledged that they signed, sealed, and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws of the State of Illinois.

Given under my hand and notarial seal this 27th day of December, { CHARLES O. HENTHORN, NOTARY PUBLIC, CHICAGO, ILLS. } in the year of our Lord one thousand eight hundred and seventy-three.

CHARLES O. HENTHORN,
Notary Public.

I do hereby accept the trusts mentioned in the within deed this 30th day of December, A. D. 1873.

GEO. TAYLOR. [SEAL.]

And afterwards, to wit, on the thirty-first day of October, in the year last aforesaid, said defendants, David A. Gage and Eliza M. Gage, by Lawrence, Winston, Campbell, and Lawrence, their solicitors, filed in the office of the clerk of said court their certain appearance in writing, which is in words and figures as follows, to wit:

20 In the superior court.

STATE OF ILLINOIS,
Cook County, ss:

THE CITY OF CHICAGO
vs.
DAVID A. GAGE AND ELIZA M. GAGE, HIS wife, et al. } In chancery.

We hereby enter the appearance of said defendants, David A. Gage and Eliza M. Gage, in the above-entitled suit.

LAWRENCE, WINSTON,
CAMPBELL, AND LAWRENCE,
Attys. for Gage & Wife.

And thereupon, to wit, on the 31st day of October, in the year last aforesaid, the same being one of the days of the October term of said court, the following, among other proceedings, were had in said court, and entered of said record, to wit:

THE CITY OF CHICAGO
vs. } 1983, 52090.
DAVID A. GAGE ET AL.

This day came into open court Messrs. Lawrence, Campbell, Winston, and Lawrence, and enter' their appearance as solicitor of record for the defendants, David A. Gage and Eliza M. Gage, and on their
21 motion it is ordered by the court that the time for said defendants to plead, answer, or demur to the bill of complaint filed in this cause be, and the same is hereby, extended until the sixteenth day of November, A. D. 1874.

And afterwards, to wit, on the seventeenth day of November, in the

year last , said defendants, David A. and Eliza M. Gage, by their solicitors aforesaid, filed in the office of the clerk of said court their answers, which are in words and figures as follows, to wit:

Superior court of said county. To November term, A. D. 1874.

STATE OF ILLINOIS,
County of Cook, ss:

THE CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, & GEORGE Taylor. } In chancery.

The separate answer of the said defendants, David A. Gage and Eliza M. Gage, to the bill of complaint filed in said cause.

Now come the said David A. Gage and Eliza M. Gage, his wife, by Lawrence, Winston, Campbell, and Lawrence, their attorneys,
22 and for answer to said bill, or so much thereof as they are advised is necessary to be answered unto, say that they admit that said defendant, David A. Gage, prior and up to the 16th day of December, A. D. 1873, had been treasurer of the city of Chicago, but they deny that said Gage was on the 16th day of December, A. D. 1873, indebted unto the said city of Chicago in the said sum of five hundred and seven thousand seven hundred and four dollars, ($507,704,) for moneys before that time belonging to the said city of Chicago which had been received by him as treasurer of said city, as is in said bill alleged.

Respondents, further answering, admits that the term of office of said David A. Gage as treasurer as aforesaid expired on or about the said 16th day of December, A. D. 1873, but whether his successor had been duly elected and qualified or not he does not know and cannot state.

Respondents, however, deny that there was any indebtedness due from said David A. Gage to the said city, which it was his duty to pay over to such successor, and they deny that said Gage neglected, failed, or refused so to do.

Respondents, further answering, say that they admit that they executed and delivered to said George Taylor the said trust-deed which is described in said bill as having been recorded in the office of the
23 recorder of deeds of said Cook County, but whether the copy thereof attached to said bill is correct respondents do not know and cannot state, and whether the said bill correctly describes the contents of said trust-deed and the premises conveyed by said bill respondents are not advised and cannot state.

Respondents, further answering, admits that said George Taylor accepted the said trust, on or about the 30th of December, A. D. 1873, and has sold some portion of said premises, and has, as your orator is advised and believes, realized some $30,000 as trustee as aforesaid, but what portion thereof he has paid to the city of Chicago respondents are not advised and cannot state; but respondents deny that there is now due from said David A. Gage, as late treasurer of the city of Chicago, any sum of money whatever.

Respondents, further answering, say that they are not advised and cannot state whether said George Taylor has been ordered by said S. S. Hayes, the comptroller of said city of Chicago, to proceed to make per-

emptory sale of said property, as alleged in said bill, or whether he has refused so to do, but they allege that neither the said Hayes nor the said Taylor have any right or authority either to make or to order such a sale, for the reason that there is no indebtedness whatever existing from said David A. Gage to the said city of Chicago.

24 And now, having fully answered, these respondents pray to be hence dismissed with their reasonable costs and charges in this behalf expended.

DAVID A. GAGE,
ELIZA M. GAGE,
By LAWRENCE, WINSTON,
CAMPBELL, AND LAWRENCE,
Their Attys.

And afterwards, to wit, on the twenty-second day of December, in the year last aforesaid, said complainant, by its solicitor aforesaid, filed, in the office of the clerk of said court, its certain replication, which is in words and figures as follows, to wit:

In the superior court of Cook County, Illinois. To the December term thereof, 1874.

THE CITY OF CHICAGO, PLAINTIFF,
against
DAVID A. GAGE, ELIZA M. GAGE, AND GEORGE Taylor, defendants.

The replication of the City of Chicago to the answer of David A. Gage and Eliza M. Gage, defendants.

25 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that it will aver and prove its said bill to be true, certain, and sufficient unto the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; that without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill it hath already prayed.

T. LYLE DICKEY,
Sol. for Complainant.

And afterwards, to wit, on the thirtieth day of December, in the year last aforesaid, said defendant, George Taylor, by B. G. Caulfield, his solicitor, filed in the office of the clerk of said court his certain answer, which is in words and figures as follows, to wit:

In the supreme court of Cook County.

STATE OF ILLINOIS, *Cook County, ss:*

26 The separate answer of George Taylor to the bill of complaint of the city of Chicago preferred against David A. Gage and Eliza M. Gage, his wife, and against respondent, in said court.

Said respondent, George Taylor, for answer to said bill of complaint, admits that said David A. Gage had, before Dec'b'r 16th, 1873, been treasurer of said city of Chicago, and that on that day said Gage was indebted, as such treasurer, to said city in a large sum of money, the amount of which is not personally known to respondent, but upon information and belief he admits that it was to the amount of ($507,704) five hundred and seven thousand seven hundred and four dollars, as alleged in said bill. Respondent admits all the other allegations in said bill, some of which are known to him to be true, and the evidence thereof he believes to be true.

Respondent, further answering, says, (as a reason for not proceeding to sell in obedience to the order of said comptroller, as alleged in said bill,) that the amount of said indebtedness (for the securing of which said deed of trust was issued) is not stated in said deed of trust and was not known to respondent, and he was unwilling to take the responsibility of proceeding until the amount of said indebted-
27 ness or liability should be definitely fixed, either by the agreement of the parties or by the order of the court.

Respondent submits to the court and says that he is ready and willing to do his duty in the premises as soon as the same shall be declared by this honorable court; and having answered fully, asks to be hence dismissed with his reasonable costs.

GEO. TAYLOR.

And afterwards, to wit, on the second day of April, in the year of our Lord *A. D.* 1875, there was filed in the office of the clerk of said court by said defendant, by his attorneys, Lawrence, Winston, Lawrence and Campbell, a certain affidavit; which is in words and figures as follows, to wit:

STATE OF ILLINOIS,
County of Cook, ss:

And superior court thereof to March term, A. D. 1875.

THE CITY OF CHICAGO
vs. In chancery.
DAVID A. GAGE AND OTHERS.

David A. Gage, being first duly sworn, states, on oath, that he is one of the defendants in the above-entitled cause; that George Taylor
28 is a material witness for this defendant in said cause; that the said George Taylor is the trustee in the trust-deed sought to be foreclosed in this case, and has in his personal possession a certain assignment made to him by this affiant upon the same day that said trust-deed was given, and which was a part of the same transaction; said Taylor also has in his possession the papers, documents, and effects covered by said assignment, including, among other things, Riverside bonds to the amount of $350,000, vouchers of the city of Chicago to the amount of $12,400, the penal bonds given by the 2nd National Bank, the Bank of Chicago, the Manufacturers' National Bank, and the banking-house of A. C. Badger & Co., upon which suits have been brought for the use of the city of Chicago, and that affiant cannot procure copies thereof or prove the contents thereof, but the same are all material evidence for him in said cause. Affiant also expects to prove by said Taylor that, as trustee for said city, he has collected of the as-

sets placed in his hands for the benefit of said city a note of C. L. Woodman for $10,000; also, that he has sold the two houses on Michigan avenue, mentioned in said trust-deed, for the sum of $20,000 each.

Affiant expects further to prove by said Taylor that this affiant was elected, in the fall of the year A. D. 1869, upon the platform and express pledge on the part of this affiant to the voters of the city of
29 Chicago, that he would, if elected city treasurer, loan the surplus funds of the city and pay over to the said city interest thereon; also, that soon after the election of said Gage there was held a meeting at which was present the comptroller, the mayor, the finance committee, and said Gage, and it was then and there agreed that this affiant should loan the surplus funds of said city in his discretion, and pay over to said city four (4) per cent. interest thereon, and keep the balance of interest as his own compensation.

Affiant also expects to prove by said Taylor that this affiant, during the time when said Taylor was comptroller of said city, at the request of the then mayor, comptroller, and finance committee of said city, cashed the warrants of said city out of funds belonging to the water-fund and special-assessment funds, when he was not bound by law so to do, and thereby saved the said city in all about $450,000, which they would otherwise have been compelled to pay; that these loans were with the knowledge and at the request of the said comptroller.

Affiant further expects to prove that up to the panic of 1873 the said Second National Bank, and the Bank of Chicago, and the Manufacturers' National Bank, and the banking-house of A. C. Badger & Co. were in good commercial credit as safe and reliable places of deposit.

30 Affiant knows of no other witness by whom he can prove said facts as fully and particularly as by said Taylor, and that he can procure his attendance, with the said papers and documents, by the next term of this court. This affidavit is not made for delay, but that justice may be done.

Affiant further says that said Taylor is a resident of the city of Chicago, and this affiant saw him on Wednesday, the 31st day of March, 1875, in the forenoon, and stated to him that this cause would be heard on this 2nd day of April, and asked him if he would be present to testify in said cause and bring the said papers and documents with him, and said Taylor replied that he would; and to make sure of his attendance affiant took out a subpœna to serve on said Taylor, and sent same to his place of business in said city on the morning of April 1, 1875, and was then informed for the first time that said Taylor had left for New York the evening before, in pursuance of a telegram, and would not be back until next week, and that all of his said papers were locked up.

Said Taylor is not absent by or with the knowledge or procurement of this affiant.

D. A. GAGE.

Subscribed and sworn to before me this 2nd day of April, A. D. 1875.
[N. P.] CHAS. H. LAWRENCE,
Notary Public.

31 And afterwards, to wit, on the eighth day of April, in the year last aforesaid, Wm. F. Ayres, by Fuller and Smith, his solicitors, filed in the office of the clerk of said court his certain petition to be made party, answer, cross-bill, petition for removal, and bond; which is in words and figures as follows, to wit:

In superior court of Cook County.

CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, AND GEORGE Taylor. } In chancery.

To the hon. the judges of said court in chancery sitting:

Your petitioner, William F. Ayers, respectfully shows unto your honors that he is a citizen of the State of Alabama, and is a judgment-creditor of the deft., David A. Gage, and claims a lien upon the property described in the bill of complaint in this cause, and he asks to be made a party deft. hereto, with leave to file the accompanying answer herein, to which your petitioner refers, and prays that it may be taken as part hereof.

WM. T. AYRES,
By FULLER AND SMITH,
His Solicitor.

32 In the superior court of Cook County.

CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, GEORGE Taylor, and William T. Ayres.

Answer of William T. Ayres, one of the defendants to the bill of complaint of The City of Chicago, complainant.

This defendant, saving and reserving all exceptions in the said bill of complaint, and its manifold errors and insufficiencies, for answer thereunto, or so much or such parts thereof as he is advised is material and necessary to make answer unto, answering, says:

On the 5th day of April, 1875, at the March term, A. D. 1875, of said court, this defendant, by the consideration and judgment of the circuit court of the United States in and for the northern district of Illinois, recovered a judgment against the defendant, David A. Gage, for the sum of $3,065.92, upon which execution has been issued and returned "no property found," and said judgment remains in full force and effect, and altogether unsatisfied.

33 This defendant, further answering, says that the trust-deed in said bill of complaint in this writ set up is void for want of consideration, and that this defendant is entitled to collect the amount of his said judgment out of the property named therein.

This defendant, further answering, says even if said trust-deed shall be found to be valid, that there is comparatively but a small amount of it now due thereon, and that there is a sufficient surplus to fully pay this defendant's said judgment.

This defendant, further answering, says that he files a cross bill herewith, stating at large the facts and circumstances upon which he relies to establish the invalidity of said trust-deed, and his claim to relief thereagainst, and refers to the same, and asks that it may be considered in connection herewith, and a part of this answer, so far as applicable.

This defendant, further answering, says that the City of Chicago has not sustained any loss entitling it to a foreclosure of said trust-deed and sale thereunder, or decree of this court to that effect; and having

fully answered, this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained, &c.

W. T. AYRES,
By FULLER AND SMITH,
His Solicitors.

M. W. FULLER,
Of Counsel.

34 In superior court of Cook County, of the April term, A. D. 1875.

STATE OF ILLINOS,
Cook County ss:

To the judge of said court in chancery sitting:

Your orator, William T. Ayres, executor of the last will and testament of Charles P. Gage, late of the State of Alabama, deceased, brings this his cross-bill against the City of Chicago, David A. Gage, Eliza M. Gage, & George Taylor, and, thereupon complaining, says: That your orator is a resident & citizen of the State of Alabama, and so has been for many years last past, and that said defendants reside in and are citizens or corporations of & in the county of Cook, and State of Illinois.

And your orator further shows unto your honors that heretofore, to wit, in the term of March, in the year of our Lord one thousand eight hundred and seventy-five, in the circuit court *in* the United States in and for said northern district of Illinois, by the consideration and judgment of said court, your orator reserved against David A. Gage, one of the defendants in this suit, the sum of three thousand and sixty-five $\frac{92}{100}$ for the damage which he has sustained as well by reason of the non-performance by said David A. Gage of certain promises & undertakings on his part as for the costs and charges of your orator by
35 him about his suit in that behalf expended, which were adjudged to your orator in and by the said court, whereof the said David A. Gage was convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

And your orator further shows unto your honor that the said judgment so recovered in manner aforesaid, remaining in full force and effect, and the costs and damages as aforesaid unpaid and unsatisfied, your orator, on or about the 5th day of April, in the year of our Lord one thousand eight hundred and seventy-five, for the purpose of obtaining a satisfaction of the said judgment, sued and prosecuted out of the said court a writ of the people, called a fieri facias, directed to the marshal of the United States in and for the district aforesaid, that being the district in which said defendant reside' at the time of the issuing of said writ, by which said writ the said marshal was commanded that of the goods, chattels, lands, and tenements of the said David A. Gage, defendant, in your district you cause to be made the sum of three thousand and sixty-five $\frac{92}{100}$ dollars, which your orator in said United States circuit court recovered against the said defendant, David A.
36 Gage, and that he should have the money at the clerk's office of said court at Chicago, in said county, in ninety days from the date thereof, to satisfy the judgment so recovered by your orator as aforesaid, and that he should have then and there that writ.

And your orator further shows unto your honor that the said writ of fieri facias, before the delivery thereof to the said marshal, was duly

endorsed and was afterwards, and on or about the 6th day of April, in the year of our Lord one thousand eight hundred and seventy-five, delivered to the said marshal to be executed in due form of law.

And your orator further shows unto your honor that the said marshal of said district aforesaid, on the 6th day of April, in the year of our Lord one thousand eight hundred and seventy-five, returned on the said writ to him in that behalf directed and delivered as aforesaid, "I have made a demand upon the defendant, and I have made diligent search, and can find no goods or chattels, lands or tenements, of the within defendant in my district whereof I can make the amount of the within execution, or any part thereof, & return the same unsatisfied," as by the said writ of fieri facias, and the directions and the return of the said U. S. marshal endorsed thereon, as aforesaid, now on file in the office of the clerk of the United States court, will more fully appear, and
37 to which, or to a copy thereof, your orator prays leave to refer.

And your orator further shows unto your honor that the said judgment still remains in full force and effect, not reversed, or satisfied, or otherwise vacated, and that the said David A. Gage has not paid the same to your orator, but has hitherto wholly neglected and refused so to do.

And your orator further shows unto your honor that there is now actually and equitably due to your orator, upon the aforesaid judgment, the sum of three thousand and sixty-five $\frac{92}{100}$ dollars, together with the interest thereon from the 5th day of April, one thousand eight hundred and seventy-five, over and above all claims of said defendant by the way of set-off or otherwise.

Your orator further shows unto your honors that he is the executor of the last will and testament of Charles P. Gage, deceased, who resided in and was a citizen of the State of Alabama at the time of his decease, which occurred on or about the 15th day of June, A. D. 1869, and that your orator duly qualified as such executor, and letters testamentary issued to him as such on or about the day of , A. D. 1869.

That among the assets of said Charles P. Gage was a certain indebtedness of the defendant, David A. Gage, to said Charles P. Gage, deceased, which indebtedness was subsequently evidenced by certain notes, three in number, payable to your orator and executed by said David A.
38 Gage, all of which have matured, two of which have been paid, and one of which is the note upon which judgment has as aforesaid been rendered.

Your orator further shows unto your honors that the said David A. Gage, so far as your orator is informed and believes, has no property subject to execution out of which your orator can procure a satisfaction of his said judgment, except that pretended to be held by the defendant, the city of Chicago, or by the defendant, George Taylor, as trustee for the city of Chicago, as hereinafter more fully stated and set forth, and that your orator is entitled to collect his said judgment out of said property, or a portion thereof, for the reason hereinafter given.

Your orator further shows unto your honors that the said David A. Gage was treasurer of the city of Chicago from December, A. D. 1869, to December, A. D. 1873, that the term of office was two years, and that said Gage was twice elected thereto. That prior to the election which took place in November, A. D. 1869, a majority of the people of the city of Chicago desiring and advocating the adoption by the city of the financial policy of loaning the surplus funds of the city, from time to time, so that interest might be earned upon the same for the benefit of said city, the said Gage became the candidate of said majority, and publicly pledged

himself to the policy indicated, and the payment of interest upon
39 said surplus funds, and was elected accordingly; that said Gage qualified for treasurer in December, A. D. 1869, and having been re-elected, qualified for a second time in the fall of 1871, having been elected and re-elected by a very large majority, in view of the pledge aforesaid, as your orator believes, which publicly known and acknowledged facts are stated here in explanation, as your orator believes, of the subsequent action of the defendant, the city of Chicago, in its dealings with the said Gage.

Your orator further shows unto your honors that, by the charter of the city of Chicago, during the time that said David A. Gage occupied the position of city treasurer, the treasurer and city collector and all receivers of the city money were required to keep safely, without loaning or using, unless otherwise directed by ordinance or resolution of the city council, all the city or public moneys collected by them; that it was within the power of the common council to, by legislative act, *to* fix the actual treasury, subtreasury, vault, safe, or other special place in which the money of the municipal corporation might be kept intact; and that it was also within their power, under the charter aforesaid, to authorize the loaning or investing of the city's funds in such manner as directed, or according to the best judgment of the treasurer, if the common
40 council should permit him to do so; and it was also provided that the treasurer might be required to keep any and all moneys in his hands belonging to said city in such bank or banks, or other public place or places of general deposit, or in such place or places of deposit, in the manner and upon the conditions, and upon such rate of interest, as the council might provide.

Your orator further shows unto your honors that in December, A. D. 1869, the said David A. Gage sent a communication to the common council of the city of Chicago inclosing his official bond, which communication was referred to the committee on finance, and was in the words and figures following, to wit:

"GENTLEMEN: Please find inclosed my official bond as city treasurer, subject to your approval. It would please me if your honorable body would designate banks or institution for depositing the city funds, and arrange for receiving interest for the same, thereby relieving from this large bond and the great responsibility attached to the office. Should you decide, however, to put the responsibility upon your treasurer, and refuse to direct me where to deposit said funds, I would respectfully state that I have made arrangements with four of our city banks to receive such deposits and allow four and a half per centum per annum upon average balances. As you will see by my bond, I require no banker or receiver of such deposits to sign it, and for that reason I receive
41 one-half of one per cent. per annum additional interest. As there has been, and still exists, a doubt in the minds of any as to whether the city can or cannot receive interest on the deposits, I propose to give the city the benefit of all such doubts. The interest from all the funds will be by me put to the credit of the city and will be subject to such laws or ordinances as you may make hereafter, and used in such a way as your wisdom shall decide. The interest does not belong to me, as your treasurer or as an individual. The compensation of the city treasurer is small, and I trust you will increase the same to an amount commensurate to the responsibility and the largely-increased duties of the office.

"Respectfully,

(Signed) "D. A. GAGE."

Your orator further shows unto your honors that, after said sixth day of December, and during that month, it was agreed by and between the said defendant, D. A. Gage, and the then mayor, comptroller, and finance committee of said city of Chicago, as your orator charges upon information and belief, that the said Gage should loan the city balances upon the best terms that he could make, and should pay to the city four per cent. interest thereon, if so much was obtained by him, and that all interest received over and above that might be retained by said Gage as compensation.

42 Your orator further shows unto your honors that on the fifth day of December, A. D. 1870, the mayor of the city of Chicago read an annual report to the common council of said city, in which he stated that "the city treasurer has paid to the comptroller $64,829.09 for interest which he has collected on deposit of city funds for the past year," and expresses the belief that "it is an example that it is presumed will be followed hereafter."

That on the twelfth day of December, A. D. 1870, a communication was received by the common council from the city treasurer, published and referred to the committee on finance, in which the said defendant, D. A. Gage, as such treasurer, reported to the common council of the city of Chicago the following statement of interest received by him on the city deposits, "all of which," he states, "is returned to the city comptroller for the benefit of the city.

"Amount received as interest on deposits $64,829 07
"Paid to comptroller ..... $64,829 07"

That on the eighteenth day of December, A. D. 1871, a resolution was adopted by the common council requesting the comptroller to make a statement of interest received from the city treasurer on city deposits, to be presented to the council at its next regular meeting.

That on the eighth day of January, A. D. 1872, the official bond
43 of said David A. Gage for his second term of office, as city treasurer aforesaid, was approved and a report presented from the city comptroller, the said defendant, George Taylor, of the amount of interest already up to that time deposited in the city treasury as received on the city deposits, namely, $64,829.07; which report was ordered published and referred to the committee on finance.

That on the thirteenth day of January, A. D. 1872, the committee on finance, through its chairman, submitted a report to the common council, upon a resolution making inquiry as to certain expenditure, which report was laid over and published. By the resolution the committee on finance were instructed to report, among other things, how much money had been paid into the city treasury during the two years ending December first, 1871, as interest on city deposits, and by its report said committee answered said interrogatory as follows:

"There has been paid in interest on city deposits for the two years ending Dec. 1st, 1871, the sum of $100,829.07."

That on the twenty-sixth day of February, A. D. 1872, said common council instructed its committee on finance to ascertain and report if the original proposition to pay four and a half per cent. per annum on all balances in the treasury for the past two years to the city has been complied with, and also to negotiate with D. A. Gage, city
44 treasurer, pertaining to the amount of interest to be paid into the city treasury for the years 1871, 1872, and 1873; that on the thirtieth day of May, A. D. 1872, the finance committee submitted a report on the balances in the treasury, as reported by the comptroller

from December first, A. D. 1869, to December first, A. D. 1871, which report was concurred in by the council by vote & ordered published, and ch report was and is in substa nc e as follows:

"To the mayor and aldermen of the city Chicago in common council assembled:

"Your committee on finance, to whom was referred a certain statement of the city comptroller of certain balances in city treasury, quarterly from December 1st, 1869, to December 1st, 1871, with instruction to ascertain whether the original proposition to pay 4½ per cent. per annum on all balances in the treasury for the past two years to the city has been complied with; also to negotiate with D. A. Gage, city treasurer, pertaining to the amount of interest to be paid into the city treasury as interest on the balances in the city treasury for the years 1871, 1872, and 1873, and report the facts to the council, would respectfully report that they have investigated the facts, and find that on December 6th, 1869, Mr. Gage sent a communication to the council, accom-
45 panying his official bond, in which he stated that he would be pleased if the council would designate a bank or banks for the deposit of city moneys and arrange for receiving interest thereon, thereby relieving him from his bond and the great responsibility attached to the office; but that if the counsel should decide to put the responsibility on the treasurer, and refuse to direct him where to deposit the funds, he would inform the council that he had made arrangements with four of the principal banks to allow 4½ per cent. per annum on average balances. That he could make such arrangements with the banks by reason of not having requested any banker or receiver of such deposit to sign the same, and thereby he would be enabled to get ½ of one per cent. per annum additional interest. The communication closed with the following: 'The compensation of the city treasurer is small, and I trust you will increase the same to an amount commensurate with the responsibility and largely-increased duties of the office.' This communication was on the same day referred to the finance committee, who do not appear to have made any report thereon. Your committee has ascertained that the finance committee had one or more interviews with Mr. Gage, and that the committee decided that it would be bad policy to make any
46 change in the salary fixed for the treasurer, to wit, $2,500, and that under the circumstances it would be better for him to retain from the interest such amount as would compensate him for the management of the funds and for the risk he incurred in loaning the money. The amount of such compensation was discussed at those interviews, and it was estimated by those parties that the ½ per cent. would probably produce about $10,000 a year, and as the 4½ per cent. that could be obtained was ½ per cent. more than what was usually paid by responsible parties upon demand-loans of that kind, it appears to have been understood by the parties, Mr. Gage and the finance committee, that he should deduct such $10,000 per annum as a reasonable compensation for the management of and risk assumed in the loaning of moneys. Inasmuch as Mr. Gage was under no legal obligation to pay over any of the moneys received as interest, and from the fact that the necessary clerk-hire of his office exceeded by 500 dollars the amount of his salary as treasurer, the arrangement would appear to have been a not unreasonable one. The arrangement, we are advised, met with the approval of the then mayor, comptroller, and corporation counsel.

"The treasurer's books show the interest actually received by

47 him (during the two years mentioned in the resolution) to have been $121,829.07. Deducting the said compensation of $10,000 per annum for the two years, $20,000, leaves interest to be paid over $101,829.07.

"Mr. Gage, the treasurer, paid over prior to the passage of the resolution $100,829.07, leaving a balance of $1,000, which your committee found to be due the city; this amount Mr. Gage has since paid to the comptroller.

"We will state that Mr. Gage appears to have understood that the $500 per annum excess of clerk-hire of his office over his salary was to be also allowed him, and for that reason retained the same; but as your committee could not satisfactorily determine that to have been the arrangement, Mr. Gage, without hesitation or objection, immediately paid in this extra $1,000.

"In respect to so much of the resolution as requires us to negotiate with Mr. Gage as to the interest to be paid on deposits for his present term, your committee would report that Mr. Gage informs us that he is now, as he was at the commencement of his former term, willing that the council should manage the deposit of city funds and designate the banks where the same are to be deposited, and thereby relieve him from the care and responsibility attending the same, if the council should think proper so to do, but if not, and the care and responsibility
48 is to devolve upon him, he can only say that his past course in regard to the city funds and interest thereon is the only guarantee that he is desirous to give as to what will be his conduct in the future.

"Inasmuch as Mr. Gage has paid into the city treasury nearly $102,000 received for interest upon city deposits during the past two years, which he was under no legal obligation to do, and as he is the first treasurer of the city who has not treated the interest money as the perquisites of his office, your committee are of the opinion that, rather than to undertake the risk of loss which might occur through the council undertaking to manage this matter, it would be for the interests of the city to leave the deposits under the control of Mr. Gage, relying upon Mr. Gage's official bond as security to the city, and believing, as to payment of the interest, that his past course is sufficient guarantee as to the future.

"Respectfully submitted.

(Signed) "W. B. BATEHAM,
(Signed) "JOSEPH E. OTIS,
(Signed) "L. D. BOND,
"*Committee on Finance.*"

Your orator further shows unto your honors that said Gage charged himself in his accounts with the said city of Chicago, for the four years from December, A. D. 1869, to December, A. D. 1873, with interest from time to time, as received by him, amounting in all to one hun-
49 dred and thirty thousand eight hundred and twenty-nine dollars and seven cents.

That the said Gage, from time to time, using all due care and diligence in performance of the same, loaned and invested the funds of said city for the purpose of making interest thereon to be paid over to said city in pursuance of the original agreement aforesaid, and ratified as aforesaid, and that, as your orator believes, all of said loans were judiciously made and fully secured said city in the premises.

Your orator further shows unto your honors that by the charter of

said city of Chicago in force during the years 1869, 1870, 1871, and 1872, it was provided that "in case of deficiency in any fund to meet any demand upon it, the comptroller might, with the sanction of the mayor and the finance committee, use, to meet such demands, any moneys standing to the credit of any other fund either general or special, except the water-fund, the school-tax fund, and special-assessment fund, provided the consent of the officer of the department more particularly charged with the disbursements of the funds so used should be first had and obtained thereto, a correct account of all moneys so transferred to be kept by the comptroller; and it was further provided that said moneys should be replaced by him, within not to exceed three months,
50 out of the revenue subsequently received in the treasury to the credit of the fund thus supplied, and no moneys were to be so used or transferred unless adequate provision was made which should permit their re-imbursements within such period.

Your orator further shows unto your honors that during the first two years of the occupancy of the office of city treasurer by the defendant, D. A. Gage, a very large amount of money stood to the credit of the "water-fund," so called, belonging to said city, which money could not be lawfully used for any other purpose than that for which it was holden.

That the said city of Chicago was during the same period in great stress for money, and would have been obliged to have paid, if it had been compelled to borrow of others than those holding its own funds, at least at the rate of ten per cent. per annum for such temporary loans as it might make to meet the deficiences in other funds.

That the said defendant, David A. Gage, at the request of the comptroller, and with the sanction of the mayor and the finance committee, loaned to the said city contrary to law an average sum per month of one million three hundred thousand dollars out of said water-fund, and without interest, from the first day of July, 1870, to the first day of October, 1871, a period of fifteen months, and so subsequently on to Dec.
51 16th, 1873, upon which money the said Gage might have made, had he used the same for his own benefit and advantage and not that of the city of Chicago, several hundred thousand dollars, and by means of such loans the city of Chicago, which would otherwise have had to pay at least three hundred thousand dollars in interest, was relieved from that necessity, and its wants supplied. And your orator states this fact as bearing upon the relations subsisting between the defendant, David A. Gage, and the financial and other officers of the city government, and as tending to substantiate the averments which your orator has and will hereafter make in regard to the agreement and the effect of the agreement between the said defendant the City of Chicago and the said defendant David A. Gage.

Your orator further shows unto your honors that about the middle of December, A. D. 1873, and before the sixteenth day of said month, the loans which said David A. Gage had made were as follows:

Union National Bank, demand loan	$109,409 69
Commercial National Bank, demand loan	$31,000
Second National Bank, demand loan	$115,000
52 Third National Bank, demand loan	$80,000
Cook County National Bank, demand loan	$75,000
Manufacturers' National Bank, demand loan	$15,000
A. C. Badger & Co., demand loan	$2,500
Tenth National Bank, demand loan	$51,000
Bank of Chicago, demand loan	$15,000

Union Stock-Yards National Bank, demand loan	$10,000	
Hibernian National Bank, demand loan	$10,000	
State Savings Bank, demand loan	$55,000	
Mechanics' National Bank, demand loan	$20,000	
German National Bank, demand loan	$10,000	
53 C. L. Woodman & Co., time loan	$10,000	
350 Riverside bonds, time loan	$337,803	58
City vouchers, upon which the money had been advanced	$12,400	

Making nine hundred and fifty-nine thousand & forty-three dollars and twenty-seven cents.

And there was on hand in the city treasury six thousand six hundred and sixty-seven $\frac{54}{100}$ dollars in cash items.

Your orator further shows unto your honors that the demand loans to said banks were secured by penal bonds executed by the said banks with good and sufficient securities, and conditioned for the payment of said loans or any part thereof on demand; and that all said banks at the time said loans were made to them were in good credit. That the note of C. L. Woodman and Co. was short commercial paper, and has since been paid. That the city vouchers for twelve thousand four hundred dollars were obligations of said city to contractors aggregating that amount, which had been cashed by said defendant Gage as city treasurer aforesaid. That the three hundred and fifty Riverside
54 bonds were part of an issue of one thousand bonds of one thousand dollars each, secured by deed of trust, covering five hundred and three acres of suburban property and three hundred and fifty-four lots in Riverside, Cook County, Illinois, together with the gas-works and water-works of said town, and that at the time said bonds were taken the estimated value of said security was more than one million five hundred thousand dollars.

Your orator further shows unto your honors that Daniel O'Hara having been duly elected city treasurer of the city of Chicago, as successor in office to the defendant David A. Gage, took possession thereof on the sixteenth day of December, A. D. 1873; that he at that time was informed as to the entire list of assets on hand, and selected out of the same certain of said assets which he was willing to receive as cash, to wit, the demand loans made to the Union National, Commercial National, Third National, Cook County National, Fourth National, Union Stock-Yards National, Mechanics' National, German National, Hibernian National, and State Savings Banks; and that the said O'Hara also took and received the cash then on hand, amounting to six thousand six hundred and sixty-seven dollars and fifty-four cents, the total of the assets which said O'Hara at that time received amounting to four hundred and fifty-eight thousand and seventy-seven dollars and twenty-three cents; that said O'Hara declined to at that time take assets of said city in the hands of said defendant, David A. Gage, as follows, to wit: The amounts on deposit in the Second National and Manufacturers' National Banks, the bank of A. C. Badger and Co., the Bank of Chicago, the city vouchers aforesaid, the note of C. L. Woodman and
55 Co., aforesaid, and the three hundred and fifty-five Riverside bonds aforesaid, which assets aggregated five hundred and seven thousand seven hundred and three dollars and fifty-eight cents.

Your orator further shows unto your honors that on the twenty-sixth day of December, A. D. 1873, the said Daniel O'Hara, treasurer of the city of Chicago, made a written demand on the defendant, David A. Gage, for the sum of $507,703.58, which he claimed said Gage owed to

said defendant, The City of Chicago, and was bound to pay over on demand, which sum included within it one hundred and thirty thousand eight hundred and twenty-nine dollars and seven cents, interest moneys received by said Gage and charged to himself, in his account with said city, as belonging to said city, by reason of the agreement between them that said city should reap the profits derived from the use of the said balances.

Your orator further shows unto your honors that the said David A. Gage was laboring under a severe illness, as your orator is informed and believes, from the fifteenth day of December, A. D. 1873, to perhaps January, 1874, and that while so suffering such demand was made upon him; that on the twenty-seventh day of December, A. D. 1873, said Gage, at the request of the mayor, the comptroller, and the law-officers of said city of Chicago, put into the hands of George Taylor,
as trustee for said city, and for the use and benefit of said city of
56 Chicago, which, by its officers, received and accepted the same,
all the evidences of loans hereinbefore enumerated as declined to be taken by said O'Hara.

Your orator further shows unto your honors that the amounts in the Second National and Manufacturers' National Banks, and in the Bank of Chicago, and in the Bank of W. Badger and Co., secured by bonds taken by said defendant David A. Gage, as before mentioned, aggregate a hundred and forty-seven thousand five hundred dollars, and that said bonds were transferred to said Taylor by the assignment made to him by said Gage under the circumstances aforesaid. That the said city of Chicago has caused suits to be commenced for its use and benefit upon the bonds so received from the banks, as aforesaid; a copy of the declaration in the case against the Second National Bank and its sureties is hereto attached, marked "Exhibit A," and made a part hereof; and your orator avers that the declarations in all the other suits are of the same tenor and effect.

Your orator avers that all of said bonds are good, and that all of said amounts are collectable with interest to within at least twenty-five hundred dollars of the total amount thereof.

Your orator further shows unto your honors that among the assets received by said Taylor was a note of Woodman and Co. for ten thousand
dollars, which has since been paid to him, and twelve thousand four
57 hundred dollars in city vouchers of said city of Chicago; that the
said Taylor has neglected to bring suit against said city upon said last-mentioned vouchers, although recovery can be had thereon, and the city compelled to pay the same if he should so do; that as to the amount due from the Manufacturers' National Bank, the president of that corporation offered to the city of Chicago its own vouchers in liquidation thereof, which said city refused to receive, whereupon said president made other use of the same, and the parties receiving the same sued the city thereon and recovered judgment.

Your orator further shows unto your honors that, on the twenty-seventh day of December, A. D. 1873, said defendant David A. Gage, being at the time ill, as aforesaid, and threatened with indictment for not, after the sixteenth day of December, 1873, paying over to the city of Chicago funds alleged to be in his hands, was persuaded by the said defendant, the city of Chicago, and induced and compelled to execute and deliver to the defendant, George Taylor, as trustee, a certain trust-deed, his wife, the defendant, Eliza W. Gage, joining therein, which was delivered by the grantors therein; about that time was duly acknowledged, filed for record in the office of the recorder of deeds in and for

the county of Cook, and recorded in record-book, page 357, a copy whereof is hereby annexed, marked "Exhibit B," and made a part hereof.

Your orator further shows unto your honors that in and by said
58 deed of trust said David A. Gage and Eliza M., his wife, purported to grant, bargain, sell, and convey to said George Taylor, as trustee, and to his successor or successors, in trust, and to his assigns, all the following-described lots, tracts, pieces, and parcels of land, situate, lying, and being in the county of Cook, and State of Illinois, that is to say:

The northeast quarter of section twenty-five, (25), township thirty-nine (39) north, of range twelve (12) east of the third principal meridian; also, lot one, (1), in the partition by commissioners appointed by the circuit court of Cook County, Illinois, of the west part of the northwest quarter and the west part of the southwest quarter of section thirty, (30), township thirty-nine (39) north, of range 13 east of the third principal meridian; the said two pieces or parts of land containing together two hundred and fifty-four (254) acres, be the same more or less.

Also, all the right, title, and interest of the said parties of the first part in and to section one, (1,) in township thirty-nine (39) north, of range twelve (12) east of the third principal meridian, being about thirty (30) acres of land in said section, for the more particular description of which reference is hereby made to recorded conveyances thereof to said David A. Gage.

Also, lot number four, (4,) in block number two, (2,) in the subdivision of the south one hundred and seventy-seven feet and six-tenths feet ($177\frac{6}{10}$) of Clark's addition to Chicago, being the premises upon which stand stone-front dwelling-houses numbers 604 and 606,
59 Michigan avenue, in the city of Chicago.

Also, the undivided half of lot number one, (1,) in block number ninety-one, (91,) in the school-section addition to Chicago, in the city of Chicago, (the whole of said lot being subject to an incumbrance of twenty-five thousand dollars, ($25,000,) together with all and singular the privileges and appurtenances thereunto belonging or in anywise appertaining.

Your orator further shows unto your honors that by and in said deed of trust it was recited that said conveyance was made for the better securing the city of Chicago against any loss on account of indebtedness of said David A. Gage, and in trust for the following purposes, to wit: to take the possession, charge, management, and control of all the said lots, tracts, pieces, and parcels of land, and each and every part thereof, with the appurtenances, and to collect the rents, profits, and income of the same, and to pay therefrom and from the proceeds of the sales thereof all taxes and assessments levied and assessed thereon; also, insurance on buildings, and the reasonable costs and expenses of the management of the premises thereby conveyed during the continuance of the trust, and under the direction and with the concurrence of the comptroller of the city of Chicago, as soon as the same could be done to the interest of all concerned, to sell and convey said premises, or any part thereof, or so much thereof as might be required, upon such terms as to said trustee and to said comptroller might seem best, and to make, sign, acknowledge, and deliver a good and sufficient deed or deeds of the part so sold to the purchaser or purchasers thereof, for the uses and purposes in said trust deed expressed, and receive
60 the proceeds and pass the same and the income thereof, as receiver, into the treasury of said city of Chicago, in liquidation

pro tanto of whatever sum or sums there were or should be found due and owing by the said Gage to the said city until the whole should be paid, and when the same was accomplished said premises should be reconveyed, or so much thereof as should remain unsold, and any surplus proceeds should be delivered to said defendant, David A. Gage. And it was further provided, in and by said deed, that in case said real estate should not be sold in accordance with the provisions set forth in said deed within the period of eight months from the date thereof, then the comptroller should have the power to order a peremptory sale thereof, on such terms as to him should seem best for the interests of the city of Chicago.

Your orator further shows unto your honors that said defendant, George Taylor, assumed to accept the said trust the thirtieth day of September, A. D. 1873, and has sold out under said trust-deed a portion of said property amounting to forty thousand dollars, as hereinbefore stated; that there remains of said real estate conveyed by said trust-deed property of about the value of about three hundred and ten thousand dollars yet unsold, which said city claims and insists to be held for its use and benefit, in addition to all of the other security here-
61 inbefore named, and the suits upon the bonds given by said defendant, David A. Gage, as treasurer of said city, to said city, which have been instituted thereon by said city and are now pending.

Your orator further shows unto your honors that the said alleged trustee, George Taylor, has been ordered by S. S. Hayes, comptroller of said city of Chicago, to proceed to make peremptory sale of said property mentioned under said trust-deed for cash, or so much thereof as may be necessary to pay said city over and above the expenses of said trust-deed the full amount of the indebtedness claimed to be owed by said defendant Gage, and said Taylor having neglected to proceed to make such sale, the said city of Chicago, on the twentieth day of October, A. D. 1874, filed in the superior court of Cook County its certain bill of complaint against the said defendant David A. Gage and the said defendant George Taylor praying for a decree of that court to compel said Taylor to proceed with such peremptory sale of the real estate yet unsold in said trust-deed described, and which is the original bill of complaint herein; that your orator has been made party thereto and answered the premises, and filed this his cross-bill to obtain affirmative relief in the premises.

And your orator shows that if such decree as prayed be granted, the said property will be sold thereunder by said defendant George Taylor, and title conveyed absolutely without any equity of redemp-
62 tion whatsoever, whereby your orator and all other judgment creditors of said Gage will be deprived of any opportunity or means to collect the amounts of their judgments out of said property.

Your orator further shows unto your honors that the property named in said trust-deed was before the $40,000 sale mentioned herein was made of the value of at least $350,000; that said defendant D. A. Gage, as your orator is informed and believes, has offered to give said city, in a deed of the same to any person to whom the city might sell upon receiving a receipt of acquittance in full, which your orator charges he ought not to be permitted to do.

Your orator further shows unto your honors that the financial situation of the country and of this community is far from prosperous; that dealings in real estate are circumscribed; that prices of real estate are low, and that if said property be permitted to be peremptorily sold by said George Taylor under a decree in said last-mentioned case, the same will be sold necessarily at an enormous sacrifice.

Your orator further shows unto your honors that on said twenty-seventh day of December, A. D. 1873, the said David A. Gage assigned and conveyed to said Taylor not simply all the assets
63 before spoken of, and which, as your orator contends, belong to said city of Chicago, but also substantially all of said David A. Gage's private property by the trust-deed aforesaid, and that your orator can find no property of said Gage other than that described in said trust-deed out of which to collect his said judgment.

Your orator further shows unto your honors that notwithstanding the said deed of trust had been obtained of the said Gage, a renew' demand was made upon him in writing by his successor, Daniel O'Hara, on the sixth day of January, A. D. 1874, for five hundred and seven thousand seven hundred and three dollars and fifty-eight cents, which amount included within it the sum of $130,829.07, interest as aforesaid, belonging to said city of Chicago under its arrangement with said Gage, and that the said Gage having turned over to said George Taylor, for the use of said city, with its assent and at its request, the assets held in lieu of said sum, did not and could not pay to said O'Hara the sum of $507,703.58 in cash besides, and was not, as your orator believes, lawfully obliged so to do.

Your orator further shows unto your honors that on the seventh day of January, A. D. 1874, an indictment was found against said Gage for not paying over the sum last mentioned, upon which he was subsequently tried and acquitted.

64 Your orator further shows unto your honors that in the bill in chancery, which the said defendant, the city of Chicago, has filed in the superior court aforesaid, it has alleged that the defendant, David A. Gage, was indebted to the city of Chicago, on the sixteenth day of December, A. D. 1873, in the sum of five hundred and seven thousand seven hundred and four dollars, which said sum includes as has heretofore been repeatedly stated $130,829.07, interest belonging to said city under its original arrangement with said Gage.

Your orator further shows unto your honors that the said city of Chicago has sold two of the pieces of property named in the trust deed aforesaid for forty thousand dollars, and has and holds said sum and claims it has a right so to do.

Your orator further shows unto your honors that the said defendant Gage is defending the said bill of complaint in the superior court aforesaid, but admits in his defence the execution of said trust-deed, and simply claims that there is nothing due upon it, and neglects and declines to make any other defence in that action.

Your orator, further complaining, shows unto your honors and charges the fact to be that the said trust-deed so given by the said defendants David A. Gage and Eliza M. Gage to the defendant George Tay-
65 lor as trustee, on the twenty-seventh day of December, A. D. 1873, is absolutely null and void, and without consideration, and should be set aside and so declared by the decree of this honorable court in favor of your orator, because your orator says that the said defendant David A. Gage loaned moneys which came into his hands as treasurer of the city of Chicago for the use and benefit of said city, and in order that said city might make a profit thereon, and then from, by, and under an agreement with the said city of Chicago, which said city had lawful power to make, and the existence of which it is estopped from denying by reason of any alleged irregularity in entering into the same.

That said Gage did with the knowledge and assent of said city make

loans for the purpose of procuring interest thereon for said city; that the loans so made by said Gage were judicious, and that the securities taken by him were such as any prudent trustee would be justified in taking in lending the money of his cestui que trust, and that the defendant, the city of Chicago, is bound by said loans so made and must take and is lawfully entitled to no more than the assets which as hereinbefore mentioned are now held for its use and benefit and which by its conduct in the premises it has already made its own, and that said city should pay over and surrender the forty thousand dollars heretofore received
66 by it from the proceeds of certain property in said trust-deed aforesaid mentioned. That said city of Chicago has received on said $507,703.58 the sum of $10,000, from C. L. Woodman and Co.; that it holds, or there is held for it, $147,500 secured by bond already in suit by direction of said city for its benefit as aforesaid; that it has or there is held for it $12,400 in its own vouchers, and that it has or there is held for it the Riverside bonds for $337,803.58 more, making the entire total of the alleged indebtedness including the $130,829 interest.

Your orator further shows unto your honors that even if said trust-deed were given on good consideration and were valid it was only given to secure the said city of Chicago against any loss on account of indebtedness of said David A. Gage, and that said city in equity and of right must first exhaust all the assets in its hands or held for its use before proceeding to attempt to sell the property conveyed in said trust-deed. That if said trust-deed is valid the sum of $130,829.07 must be deducted from the face of the alleged indebtedness, which would leave the face amount of said indebtedness as claimed by said city, $376,874.51, from which should be deducted the sum of $10,000, of $40,000, and of $12,400, leaving $314,374.51, upon which should be applied the sum of
67 $147,500, which said city is now endeavoring to collect and will collect as aforesaid if using reasonable diligences, leaving $166,-874.51 in such case due to said city, and which your orator hereby offers to pay provided he may be by said city subrogated to its rights to the three hundred and fifty-three Riverside bonds and all the property named in the trust-deed.

Your orator further shows unto your honors that there are other judgments against said David A. Gage besides that of your orator, and that while your orator claims by reason of the filing of this bill a preference in the collection, your orator is willing to permit, and hereby offers so to do, all other judgment creditors to become parties hereto and obtain the relief herein prayed.

And your orator well hoped that the defendants, David A. Gage, the City of Chicago, and George Taylor, would have prayed and satisfied your orator's judgment, or turned out property from which he could collect the same.

But now so it is, may it please your honors, that the said defendants combining and confederating together with divers others to your orator unknown, but who, when known, he prays may be made parties defendant hereto, with proper and apt words to charge them how to injure and defraud your orator in the premises, neglect and refuse so to do, and in excuse thereof set up a variety of unfounded pretenses, all of which
68 sayings, doings, and pretenses are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity where matters of this kind are cognizable and relievable, to the end that the said defendants may

true and perfect answer make to the premises, but not upon oath, (their oaths being hereby waived pursuant to statute and the rules and practice of this court,) and may, if they can, show why your orator is not entitled to the relief herein prayed, and that the said trust-deed by said defendant, David A. Gage and Eliza M. Gage, purporting to have been given to the said George Taylor on the twenty-seventh day of December, A. D. 1873, may be set aside and adjudged and decreed by this honorable court to be wholly null and void, and that the said City of Chicago account herein for the sum of forty thousand dollars so received by it as aforesaid, and that the said City of Chicago be ordered and restrained by this honorable court to absolutely desist and refrain from prosecuting its said suit in chancery in the superior court of Cook County to a decree, and that said City of Chicago and said George Taylor be likewise *be* so enjoined from selling, or attempting to sell, any of the property in the trust-deed aforesaid, and that a receiver be appointed by this honorable court herein, and an account be had and taken between the said City of Chicago and the said defendant, David A. Gage, and said defendants, George Taylor and the City of Chicago, be ordered and
69 directed to deliver up all the assets of said David A. Gage in its or their or his possession to such receiver, and that your orator may be permitted when the amount is ascertained as justly due to the city of Chicago, to pay the same and be subrogated to its rights as aforesaid, and that in the mean time the said defendants, the City of Chicago and George Taylor, or either of them, be refrained from selling, or attempting to sell, the property named in the trust-deed aforesaid, and that the said defendant, the City of Chicago, may be likewise restrained from a prosecution of its said suit in chancery in the superior court of Cook County, to compel said Taylor to sell upon the trust-deed aforesaid, and that said defendant, David A. Gage, be enjoined and restrained from conveying or joining in any conveyance of the property named in said trust-deed to said Taylor, and that your orator may have such further or other relief as the nature of his case may require and as shall be agreeable to equity and good conscience,

May it please your honors to grant unto your orator a rule of this court directing and requiring the said defendants and each of them at a certain time *and* to answer the premises and stand to, abide by, and perform the further order and decree of the court herein, but also the people's writ of injunction ordering and enjoining the said defendants as hereinbefore prayed.

And as in duty bound your orator will ever pray, &c.

W. T. AYRES,
By FULLER & SMITH,
His Solicitors.

M. W. FULLER,
Of Counsel.

70 UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

Personally comes J. E. Smith, and, being duly sworn, on oath declares and says that he is one of the solicitors of said complainant, has read said bill, and knows its contents, and that the same is true, as this affi*davit* testifies upon information and belief.

JOSEPH E. SMITH.

Subscribed and sworn to before me April 6, 1875.

E. A. DRUMMOND,
U. S. Com.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Personally comes Edward Olcott, and, being duly sworn, on oath declares and says that he has heard the foregoing bill read, and knows the contents thereof, and that the same is true; and as to the matters and things therein stated on information and belief, he believes them to be true; that the state of the accounts, the amount of interest credited the city, the loans made by D. A. Gage, and like matters, this affiant is familiar with, and they are in said bill correctly stated.

Affiant further says that he makes this affidavit at the request of the solicitors of the complainant, & has in no way any interest in said cause.

71 EDWARD OLCOTT.

Subscribed & sworn to before me April 6, 1875.
E. A. DRUMMOND,
U. S. Com.

Superior court, April term, A. D. 1875.

STATE OF ILLINOIS,
County of Cook:

CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, GEORGE Taylor, & William T. Ayres, exr. } In chancery.

WILLIAM T. AYRES, EXR.,
vs.
THE CITY OF CHICAGO, DAVID A. GAGE, ELIZA M. Gage, & George Taylor, exr. } Cross-bill.

To the honorable the superior court of said county of Cook:

Your petitioner, William T. Ayers, represents to the court that he is one of the defendants in the foregoing bill and the complainant in said cross-bill; that the complainant in said original bill is a citizen of the State of Illinois; that your petitioner, one of the defendants therein, is a citizen of the State of Alabama; that the other of said defend-
72 ants are each citizens of the State of Illinois; that the matter in dispute in said original bill, exclusive of costs, exceeds the sum of five hundred dollars; that in the said original bill there is a controversy which is wholly between the said complainant and your petitioner, and which can be fully determined as between them.

Your petitioner further shows that he is the complainant in said cross-bill, and is, as aforesaid, a citizen of the State of Alabama; that each of the defendants in said cross-bill are citizens of the State of Illinois; that the matter of dispute therein exceeds, exclusive of costs, the value of five hundred dollars; that the controversy therein is wholly between citizens of different States.

Your petitioner, therefore, prays that the said original bill and the said cross-bill may each be removed for trial into the circuit court of the United States for the northern district of Illinois, under and by virtue of the act of Congress in such case made and provided.

W. T. AYERS,
By FULLER & SMITH,
His Attys.

STATE OF ILLINOIS,
County of Cook, ss:

Mellville W. Fuller, being first duly sworn, states, on oath, that he is one of the counsel for the said petitioner, William T. Ayres, and
73 as such is authorized by him to make the foregoing petition; that he has read said petition, and knows the facts therein stated, and that the same are true. This affiant does not mean to say the controversy between complainant & defendant Ayres does not affect others as well as Ayres, though a single controversy as to him.

M. W. FULLER.

H. T. STEVENSON,
Clerk of Superior Court of Cook County.

Know all men by these presents that I, Melville W. Fuller, am held and firmly bound unto the City of Chicago, David A. Gage, Eliza M. Gage, and George Taylor in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, I hereby bind myself, my heirs, executors, and administrators, jointly and severally, by these presents, witness my hand and seal this 8th day of April, 1875.

The condition of the above obligation is such, that whereas William T. Ayres has this day prayed and obtained an order of removal, from the superior court of Cook County, in the State of Illinois, to the circuit court of the United States in and for the northern district o Illinois, of a certain cause wherein The City of Chicago is complainant and
74 William T. Ayres, David A. Gage, Eliza M. Gage, and George Taylor are defendants, and also of a cross-bill in said cause, wherein William T. Ayres is complainant and The City of Chicago, David A. Gage, Eliza M. Gage, and George Taylor are defendants:

Now, therefore, if the said William T. Ayres shall, on the first day of the next session of the said circuit court of the United States, enter therein a copy of the record of such suits and pay all costs that may be awarded by the said circuit court if said court shall hold that said suits are wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and effect.

M. W. FULLER. [SEAL.]

And afterwards, to wit, on the eighth day of April, in the year last aforesaid, the same being one of the days of the April term of said court, the following among other proceedings were had in said court and entered of record, to wit:

THE CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, AND GEORGE M. TAYLOR. } 1983. 52090.

75 This day comes the complainant to this suit, by T. Lyle Dickey, its solicitor, and the defendants, by their solicitors, also came, and thereupon, on motion of William T. Ayres, and, on his petition this day filed, it is ordered by the court that he be made a party defendant to this suit; and, on motion of said William T. Ayres, leave is given him by the court to file his answer and cross-bill herein instanter.

And thereupon the said defendant files herein his petition, based on affidavit, for the removal of this cause unto the United States circuit court in and for the northern district of the State of Illinois; and it appearing to the court that the said defendant has filed herein his bond

conditional, according to the act of Congress in such case made and provided, it is ordered by the court that this cause be, and the same is hereby, transferred to the said United States circuit court, and that the clerk of this court do forthwith transmit to said United States circuit court a complete transcript of all papers and pleadings filed in said cause, together with all orders of court made and entered therein.

And afterwards, to wit, on the ninth day of April, in the year last aforesaid, said complainant in cross-bill, by his solicitors aforesaid, filed in the office of the clerk of said court his certain exhibits "A" & "B" to cross-bill, which are in words and figures as follows, to wit:

76 In the superior court of Cook County, October term, 1874.

STATE OF ILLINOIS,
Cook County:

George Taylor, the plaintiff in this suit, who sues for the use of the city of Chicago, by Francis Adams, his attorney, complains of J. Alder Ellis, Albert Crosby, and Samuel J. Walker, the defendant in this suit, of a plea that they render to the said plaintiff the sum of five hundred thousand dollars, which they owe to and unjustly detain from him.

For that whereas the said defendants (and one Edward I. Tinkham, in his life-time, now deceased, and whom the said defendants have survived) heretofore, to wit, on the tenth day of January, A. D. 1872, to wit, at said county of Cook, by their certain writing obligatory, sealed with their seals, and now shown to the court here, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto one David A. Gage in the penal sum of five hundred thousand dollars, lawful money of the United States, to be paid to the said David A. Gage, his legal representatives or assigns, and for the payment of which, well and truly to be made, the said defendants, together with the said Edward
77 I. Tinkham, since deceased, as aforesaid, did bind themselves, their heirs, executors, and administrators, jointly, severally, and firmly.

While said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect that the said David A. Gage, as treasurer of the said obligors, or some of them, deposited with the Second National Bank of Chicago certain moneys, the property of the city of Chicago, and was about to or might deposit other sums of money from time to time, as such treasurer, with said Second National of Chicago, it was conditioned that if the said Second National Bank of Chicago should promptly, upon demand or presentation, pay all checks or drafts which might be made by the said David A. Gage as such treasurer, or by any of his authorized clerks or agents, and should at all times render to the said David A. Gage full, just, and true statements of his accounts with said Second National Bank whenever required to do so by said Gage, then the said obligation should be void, and otherwise should remain in full force and virtue, as by the said writing obligatory and the conditions thereof will more fully and at large appear.

And the plaintiff says that afterwards, to wit, on the 10th day of January, 1874, to wit, at said county, the said David A. Gage assigned to the plaintiff the said writing obligatory by endorsement thereon
78 under the hand of the said David A. Gage.

And the plaintiff avers that the said Second National Bank of

Chicago has not paid upon demand or presentation all checks which since the execution of the said writing obligatory has been made by the said David A. Gage as such treasurer or said Second National Bank, but, on the contrary, the plaintiff says that heretofore, to wit, on the 16th day of December, A. D. 1873, at said county, the said David A. Gage, as treasurer as aforesaid, drew and there made a check upon the said Second National Bank for a large sum of money, to wit, the sum of one hundred thousand dollars, (100,000.00,) payable to the order of himself, the said David A. Gage, and endorsed by the said David A. Gage, and in his name; and then and there, to wit, on the day and year last aforesaid presented the said check, so made and endorsed, to the said Second National Bank and demanded payment of the same of and from the said bank, yet the said bank, although the said David A. Gage, as such treasurer, had before the said last-mentioned time, and before the said assignment, deposited in said bank, and although there was then and there remaining on deposit in said Second National Bank of the moneys of the said city of Chicago and to the credit of the
79 said David A. Gage, as such treasurer as aforesaid, a large sum of money, to wit, the sum of one hundred and twenty thousand ($120,000) dollars, did not pay the said check or any part thereof, but to pay the same or any part thereof hath hitherto wholly failed and refused, and still refuses.

And the plaintiff, assigning another breach of the conditions of said writing-obligatory, avers that before the demand hereinafter alleged in this assignment of a breach of said conditions, said David A. Gage had deposited, as treasurer of the city of Chicago, with the said Second National Bank, divers sums of money, the property of said city, amounting to a large sum, viz, the sum of one hundred and fifty thousand dollars, ($150,000,) which large sum of money at the time of said demand hereinafter stated remained so on deposit with the said Second National Bank; and, that afterward, to wit, on the 15th day of September, 1873, and when said large sum of money so deposited, to wit, the sum of one hundred and fifty thousand dollars (money of said city) remained then and there so on deposit with said bank, said David A. Gage, treasurer as aforesaid, called upon said Second National Bank, at the county aforesaid, for the purpose of demanding of said bank payment thereof to him, or a part thereof, upon the presentation of a proper
80 check or checks therefor, (of which said bank then and there had notice;) and thereupon said Second National Bank, at the time and place when and where said David A. Gage called upon said bank for the purpose of so demanding payment as aforesaid, declared by its agent to said David A. Gage that said Second National Bank was then and there unable to pay to him said sum of money or any part thereof.

And plaintiff avers that thereby it then and there became unnecessary that said David A. Gage should draw checks for said sum of money; and plaintiff avers that said Second National Bank then and there was indebted to said David A. Gage, treasurer as aforesaid, in said large sum of money, viz, in the sum of one hundred and fifty thousand dollars ($150,000) for moneys (the property of said city of Chicago) before that time deposited with the said Second National Bank by said David A. Gage as such treasurer; and plaintiff avers that Second National Bank has ever since been so indebted, and is still so indebted, to said David A. Gage as aforesaid, and that no part of said sum of money had ever been paid by said Second National Bank to said David A. Gage, or to *or to* said city, or to any person or persons lawfully authorized to receive the same for said David A. Gage or for said

81 city, but to pay the same, or any part thereof, said Second National Bank has hitherto wholly failed and refused, and still does refuse.

And the plaintiff, assigning a further breach of the condition of the said writing-obligatory, says that heretofore, to wit, on the 15th day of September, A. D. 1874, at said county, the said David A. Gage, as such treasurer as aforesaid, made and drew a check on the said Second National Bank for the sum of fifteen thousand ($15,000) dollars, payable to the plaintiff or his order; and afterwards, to wit, on the day and year and at the place last aforesaid, the plaintiff presented the said last-mentioned check, duly endorsed by the plaintiff, to the said Second National Bank for payment, and demanded of said bank payment of the same; yet the said Second National Bank, notwithstanding the said David A. Gage had, as treasurer of the said city of Chicago, deposited in said Second National Bank before said last-mentioned time, and before the said assignment, moneys of the city of Chicago to a large amount, to wit, the amount of one hundred and fifteen thousand ($115,000) dollars, and notwithstanding, to wit, the said last-mentioned sum of money was then and there, to wit, at said last-mentioned time and place, remaining

82 on deposit in said bank to the credit of the said David A. Gage, as such treasurer, and belonging to the said city of Chicago, utterly failed to pay the said last-mentioned check, but to pay the same, or any part thereof, hath hitherto wholly failed and refused, and still refuse.

And the plaintiff, assigning a further breach of the conditions of said writing-obligatory, says that heretofore, to wit, on the 15th day of September, A. D. 1874, at said county, the plaintiff being then and there the duly-authorized agent of the said David A. Gage, drew and made a check on the said Second National Bank of Chicago, against the account of said David A. Gage, as treasurer as aforesaid, for the sum of fifteen thousand ($15,000) dollars, payable to the order of the plaintiff, and then and there endorsed the same under the hand of the plaintiff, and presented the same to the said second National Bank, and demanded payment of the same from the said bank; yet the said Second National Bank, although the said David A. Gage had, before said last-mentioned time, and before the said assignment, deposited, and although there was, to wit, at said last-mentioned time, remaining on deposit in said bank, to the credit of said David A. Gage, as such treasurer, moneys of the city of Chicago

83 to a large amount, to wit, the amount of one hundred and fifteen thousand dollars, ($115,000,) refused to pay the said last-mentioned check, or any part thereof, and to pay the same, or any part thereof, hath thence hitherto refused, and still refuse.

And the plaintiff, assigns a further breach of the conditions of the said writing-obligatory, says that theretofore, to wit, on the 15th day of September, A. D. 1874, at same county, Daniel O'Hara, who was there and then the treasurer of said city of Chicago, did, as such treasurer, and also being thereunto lawfully authorized by the said David A. Gage, draw and make a check on the said Second National Bank for the sum of fifteen thousand ($15,000) dollars, payable to his, the said O'Hara's, own order, and against the account of the said David A. Gage with said bank, as treasurer of said city, and the said Daniel O'Hara there and then endorsed the said check under his hand, and caused the same to be presented, so endorsed, and the same was presented, so endorsed, to said bank, and payment thereof was demanded of said bank; yet the said Second National Bank, although the said David A. Gage, as such treasurer as aforesaid, had, before said last-mentioned time, and before the said assignment, deposited in said

bank, and although there was then and there remaining a deposit
84 in said bank, of the moneys of the city of Chicago, and to the credit of the said David A. Gage as such treasurer, a large amount, to wit, the sum of one hundred and fifteen thousand ($115,000) dollars, wholly failed and refused to pay the said last-mentioned check, or any part thereof.

Whereby (that is, by reasons of all of which breaches of the conditions of said bond respectively, and by reason of said assigment of said bond to plaintiff as aforesaid) an action has accrued to plaintiff to demand of the said defendants the said sum of five hundred thousand dollars, (in the introductory part of this declaration above demanded;) yet the defendants, though requested, have not paid said sum of money, or any part thereof, to the said Gage or to said plaintiff, or to the said city of Chicago, but so to do have neglected and refused, and still do neglect and refuse, to the damage of plaintiff one hundred and fifty thousand dollars; and therefore he brings his suit.

T. LYLE DICKEY,
FRANCIS ADAMS,
For Plaintiff.

(Endorsed:) Filed Sept. 25, 1874. A. F. Stevenson, clerk.

85 STATE OF ILLINOIS,
Cook County, ss:

I, Alexander F. Stevenson, clerk of the superior court of Cook County, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, pertect, and complete copy of a certain declaration now on file in my office in a certain cause now pending in said court, on the common-law side thereof, wherein George Taylor, use, &c., is plaintiff & J. Alden Ellis et al. are defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 27th day of November, A. D. 1874.

[SEAL.] A. F. STEVENSON, *Clerk.*

(Endorsed:) Filed April 6, 1875. Wm. H. Bradley, clk.

Withdrawn by leave of court Ap'l 8, 1875.

WM. H. BRADLEY, *Clk.*

86 Ex. B.

Exhibit A, attached to the bill as part thereof.

CITY OF CHICAGO
vs.
D. A. GAGE ET AL.

D. A. GAGE AND ELIZA M., HIS WIFE,
to
THE CITY OF CHICAGO. } Trust-deed.

This indenture, made and entered into this 27th day of December, in the year of our Lord one thousand eight hundred and seventy-three, A. D. 1873,) by and between David A. Gage and Eliza M. his wife, of the city of Chicago, in the county of Cook and State of Illinois, of the first part, and George Taylor, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to them in hand paid, the receipt of which is hereby acknowledged, & of the special trusts hereby created, to be faithfully executed by the said party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his successor and successors in trust, and assigns, all the following-described lots, tracts,
87 pieces and parcels of land, situate, lying, and being in the county of Cook and State of Illinois, that is to say: the northeast quarter of section twenty five, (25,) township thirty-nine (39) north, of range twelve (12) east of third principal meridian; also lot one (1) in the partition by commissioners appointed by the circuit court of Cook County, Illinois, of the west part of the northwest quarter and the west part of the southwest quarter of section , (30,) township thirty-nine (39) north, of range thirteen (13) east of the third principal meridian. The said two pieces or tracts of land containing together two hundred and fifty-four (254) acres, be the same more or less.

Also all the right, title, and interest of the said parties of the first part in and to section one (1) in township thirty-nine (39) north, of range twelve (12) east of the third principal meridian, being about thirty (30) acres of land in said section; for more particular description of which reference is hereby made to recorded conveyances thereof to said David A. Gage.

Also lot number four (4) in block number two (2) in the subdivision of south one hundred and seventy-seven & six-tenths ($177\frac{6}{10}$) feet of Clark's addition to Chicago, being the premises upon which now stand stone-front dwelling-houses No. 604 & 606 Michigan avenue, in the city of Chicago.

88 Also the undivided half of lot number one (1) in block number ninety one (91) in the school-section addition to Chicago, in the city of Chicago, the whole of said lot being subject to an incumbrance of twenty-five thousand dollars, ($25,000,) together with all and singular the privileges thereunto belonging or in anywise appertaining:

To have and to hold the same and all the right, title, interest, and claim of the said parties of the first part therein unto the said party of the second part, his successor and successors in trust, and assigns.

This conveyance is made for the better securing the city of Chicago against any loss on account of indebtedness of said David A. Gage, as late treasurer of the said city, and in trust for the following purposes, namely: to take the possession, charge, management, and control of all the said lots, tracts, pieces, and parcels of land, and each and every part thereof, with the appurtenances, and to collect the rents, profits, and income of the same, and to pay therefrom, or from the proceeds of the sales thereof, all taxes and assessments levied and assessed thereon, also insurance on buildings and the reasonable costs and expenses of the management of the premises hereby conveyed, during the continuance of this trust, and under the direction and with the concurrence of the comptrollers of the city of Chicago, such concurrence to be evidenced by the signature of said comptrollers to the deed of conveyance,
89 and as soon as the same can be done to the interest of all concerned, to sell and convey the said premises or any part of the same, or so much thereof as may be required, upon such terms as to said trustee and the comptroller of said city may seem best, and to make, sign, acknowledge, and deliver good and sufficient deed or deeds of the parts so sold to the purchaser or purchasers thereof, for the uses and purposes hereinafter expressed, and to receive the proceeds of any such sale or sales,

and with and out of the net rents, profits, and income of said premises and the proceeds of such sale or sales to pay the same, from time to time as received, into the treasury of said city of Chicago, in liquidation pro tanto of whatever sum or sums are or shall be found to be due and owing by said David A. Gage to said city, until the whole shall be paid; and in case the said rents, profits, income, and proceeds of sales shall be insufficient for this purpose, then to apply the said net rents, profits, income, and proceeds of sale in satisfaction of such parts of said indebtedness as said comptroller shall deem for the interest of said city, until the whole shall be expended.

And upon the further trust, that upon the payment and satisfaction of all of said indebtedness, either with or out of the proceeds of
90 said property or otherwise, to reconvey to the said David A. Gage, his heirs or assigns, all of the said premises which may be left after the full payment of said indebtedness, then remaining unsold, and to pay over to said David A. Gage, his heirs or assigns, any surplus proceeds in any manner derived from the said premises or any part thereof, after deducting therefrom all just and proper charges and expenses attending the execution of this trust, including a fair and reasonable compensation to said trustee for his services in the premises: Provided, however, and it is expressly agreed by the said David A. Gage, that this conveyance is not to be in any sense a satisfaction of any part of said indebtedness, nor shall the same be taken as cause for any delay or interference with any other measures said city may have taken or may take to secure or to collect said indebtedness, or any part thereof.

And the said parties of the first part hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale or execution,
91 or otherwise; and the said David A. Gage, for himself, his heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, his legal representatives, or successor in trust, that at the time of the ensealing and delivery hereof he, the said David A. Gage, is well seized of said premises in fee-simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form aforesaid, and the same are free and clear from all liens, taxes, assessments, and incumbrances whatever, except as hereinbefore stated; and it is further agreed and especially understood that in case of the death, resignation, removal from the said city of Chicago, or inability to act, of the said party of the second part, then John DeKoven, of the said city of Chicago, shall be, and hereby is, appointed and made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

In case said real estate shall not be sold in accordance with the provisions hereinbefore set forth within the period of eight months from the date hereof, then said comptroller shall have the power to order a peremptory sale thereof on such terms as to him shall seem best for the interests of the said city of Chicago.

92 In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signed) D. A. GAGE. [SEAL.]
(Signed) ELIZA M. GAGE. [SEAL.]

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Charles O. Henthorn, a notary public in and for and residing in said city of Chicago, in the county and State aforesaid, do hereby certify that David A Gage and Eliza M., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under and all homestead-exemption laws of the State of Illinois.

Given under my hand and notarial seal this 27th day of December, in the year of our Lord one thousand eight hundred and seventy-
93 three.

CHARLES O. HENTHORN,
Notary Public.

{ CHARLES O. HENTHORN, NOTARY PUBLIC, CHICAGO, ILL. }

I do hereby accept the trusts mentioned in the within deed this 30th day December, A. D. 1873.

GEO. TAYLOR. [SEAL.]

(Endorsed:) State of Illinois, Cook County. No. 142874. I certify this indenture was filed for record Dec. 30, 1873. Recorded in book 334 of records, page 357. Jan. 5, 1874. Jas. Stewart, recorder.

(Endorsed:) Filed April 6, 1875. Wm. H. Bradley, clk.

Withdrawn by leave of court April 8, 1875.

WM. H. BRADLEY, *Clk.*

STATE OF ILLINOIS,
Cook County, ss:

I, Alexander F. Stevenson, clerk of the superior court of Cook County, in and for the State of Illinois, do hereby certify that the above
94 and foregoing is a true, perfect, and complete transcript of all papers and pleadings now on file in my office, and of all orders made and entered of record, in said court, in a certain cause lately pending in said court, on the chancery side thereof, wherein City of Chicago is complainant and David A. Gage et al. defendants, in the original bill, and William T. Ayers was complainant, and the City of Chicago et al. were defendants, in the cross-bill.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 30th day of April, A. D. 1875.

[SEAL.] A. F. STEVENSON,
Clerk.

(Endorsed:) Filed May 1, 1875. Wm. H. Bradley, clk.

95 And on the same day, to wit, the 1st day of May, A. D. 1875, said defendant George Taylor, by his solicitors, filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance of George Taylor.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States, northern district of Illinois, May term, 1875.

THE CITY OF CHICAGO, DAVID A. GAGE, ELIZA M. Gage, George Taylor, J. H. McVicker, Albert Crosby, John B. Sherman, and N. P. Wilder,
ats.
WILLIAM T. AYERS, EXECUTOR OF THE LAST will and testament of Charles P. Page.

We hereby enter the appearance of George Taylor, one of the defendants in the above-entitled cause.

MATTOCKS AND MASON,
His Attorneys.

(Indorsed:) Filed May 1, 1875. Wm. H. Bradley, clk.

96 Afterwards, to wit, on the 7th day of June, A. D. 1875, said defendant George Taylor, by his solicitors, filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

97 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of United States, of the March term A. D. 1875. In chancery.

The answer of George Taylor, one of the defendants, to the bill of complaint of William T. Ayers, complainant.

This defendant, now & at all times hereafter saving to himself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such part thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says: That this defendant is a stranger to all the matters and things stated in said bill of complaint, being in no way connected therewith, except as trustee for the City of Chicago, one of said defendants in this suit. This defendant further says that he is not indebted to said defendant David A. Gage in any manner whatever, as he is informed by counsel and so believes. This defendant, further answering, says that on or about the 27th day of December, A. D. 1873, the said defendant David A. Gage and Eliza M. his wife,
98 by deed of that date, conveyed to this complainant certain lands and premises, in said deed mentioned, in trust, for the use of the city of Chicago, to secure the payment of certain indebtedness claimed by the city of Chicago to be due and owing from said David A. Gage to said city, but the amount of said indebtedness this defendant is unable to state; which said deed was duly recorded in the office of

the recorder of Cook County, Illinois, January 5th, 1874, in book 334 of records, page 257, a copy of which said deed is hereunto attached, marked " Exhibit A."

This defendant further states that on or about the 27th day of December, A. D. 1873, the said David A. Gage did, under his hand and seal, execute to this defendant a certain bill of sale of certain goods, bonds, bills, notes, accounts, and choses in action, in trust for the further security of his indebtedness above mentioned, claimed to be due and owing from said David A. Gage to the said city of Chicago; a copy of which said bill of sale is hereunto annexed, and is marked " Exhibit B."

And this defendant, further answering, says that on or about the twenty-second day of July, A. D. 1874, the Chicago and Great Western Railroad Land Company, a corporation existing and doing business under the laws of the State of Illinois, did, under its hand and seal, by deeds bearing date the day and year last aforesaid, convey to this defendant, at the request of the said defendant David A. Gage, the
99 following-described lands and premises, fully set forth in the exhibits hereunto annexed, marked Exhibits C, D, E, F, & G, the originals of which are recorded in the office of the recorder of Cook County, Illinois, in book 254 of records, on pages 314, 315, 316, 331, and 332, respectively, as by reference to said records will more fully and at large appear, and to which this defendant begs leave to refer; which said deeds were delivered to this defendant as aforesaid in trust, as additional security for the payment of the said indebtedness due and owing from the said defendant David A. Gage to the said defendant the city of Chicago.

And this defendant further states that he still holds all of said trust property upon the trusts and for the purposes mentioned in said Exhibits A and B, except such portions of said lands and personal property conveyed or transferred to this defendant as aforesaid as have been by this defendant sold or disposed of in accordance with the terms and conditions of said trusts; and this defendant further states that the monies realized from said sales, or from collections, have been by this defendant paid over to said city of Chicago, except such amounts as it was prudent and proper for this defendant to retain in his hands to provide for the care, custody, and control of the real and personal property under the control of this defendant as aforesaid.

And this defendant, further answering, says that he has no
100 means of ascertaining the amount of indebtedness due and owing from said David A. Gage to said city of Chicago, and that he has no other property, goods, moneys, credits, or effects in his hands in which said David A. Gage is interested, except the real and personal property referred to in said exhibits, or the avails of some portions thereof.

This defendant further states that he is informed and believes that David A. Gage has no personal and undivided right or claim to the property mentioned in the said exhibits, or the avails thereof, until the indebtedness of the said David A. Gage to said city of Chicago shall have been paid.

And this defendant denies all and all manner of combination and confederacy wherewith he is by said bill charged; without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge

or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

MATTOCKS & MASON,
His Solicitors.
GEORGE TAYLOR.

JOHN MATTOCKS, *of Counsel.*

101 STATE OF ILLINOIS,
Cook County, ss:

George Taylor, being duly sworn, deposes and says that he is the same person whose name is subscribed to the foregoing answer, and that he has read the same and knows the contents thereof, and that the same is true, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

GEORGE TAYLOR.

Subscribed and sworn to before me this 7th day of June, A. D. 1875.
[SEAL.] LUCIUS HOYT, *Notary Public.*

Exhibit A.

This indenture, made and entered into this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and seventy-three, (A. D. 1873,) by and between David A. Gage and Eliza M., his wife, of the city of Chicago, in the county of Cook and State of Illinois, of the first part, and George Taylor, of the same place, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar, to them in hand paid, the receipt of which is hereby acknowledged, and of the special trusts hereby created,
102 to be faithfully executed by the said party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his successor and successors in trust, and assigns, all the following-described lots, tracts, pieces, and parcels of land, situate, lying, and being in the county of Cook and State of Illinois, that is to say, the northeast quarter of section twenty-five, (25,) township thirty-nine (39) north, of range twelve (12) east, of the third principal meridian; also lot one, (1,) in the partition of commissioners appointed by the circuit court of Cook County, Illinois, of the west part of the northwest quarter and the west part of the southwest quarter of section thirty, (30,) township thirty-nine (39) north, of range t irteen (13) east, of the third principal meridian, the said two pieces or tracts of land containing together two hundred and fifty-four (254) acres, be the same more or less; also all the right, title, and interest of said parties of the first part in and to section one, (1,) in township thirty-nine (39) north, of range twelve (12) east, of the third principal meridian, being about thirty (30) acres of land in said section, for a more particular description of which reference is hereby made to recorded conveyances thereof to said David A. Gage; also lot number four, (4,) in block num-
103 ber two, (2,) in the subdivision of the south one hundred and seventy-seven and six-tenths (177 $\frac{6}{10}$ths) feet of Clark's addition to Chicago, being the premises upon which now stand stone-front dwelling-houses Nos. 604 and 606 Michigan avenue, in the city of Chicago;

also the undivided half of lot number one, (1,) in block number ninety-one, (91,) in the school-section addition to Chicago, in the city of Chicago, the whole of said lot being subject to an incumbrance of twenty-five thousand dollars, ($25,000.00,) together with all and singular the privileges and appurtenances thereunto belonging or in any wise appertaining: To have & to hold the same, and all the right, title, interest, and claim of the said parties of the first part therein, unto the said party of the second part, his successor and successors, in trust, and assigns.

This conveyance is made for the better securing the city of Chicago against any loss on account of indebtedness of said David A. Gage, as late treasurer of the said city, and in trust for the following purposes, viz:

To take the possession, charge, management, and control of all the said lots, tracts, pieces, and parcels of land, and each and every part thereof, with the appurtenances, and to collect the rents, profits,
104 and income of the same, and to pay therefrom, or from the proceeds of the sales thereof, all taxes and assessments levied and assessed thereon, also insurance on buildings, and the reasonable costs and expenses of the management of the premises hereby conveyed during the continuance of this trust.

And under the direction and with the concurrence of the comptroller of the city of Chicago, such concurrence to be evidenced by the signature of said comptroller to the deed of convevance, and as soon as the same can be done to the interest of all concerned, to sell and convey the said premises, or any part of the same, or so much thereof as may be required, upon such terms as to said trustee and the comptroller of said city may seem best, and to make, sign, acknowledge, and deliver good and sufficient deed or deeds of the parts so sold to the purchaser or purchasers thereof, for the uses and purposes hereinafter expressed, and to receive the proceeds of any such sale or sales, and with and out of the net rents, profits, and income of said premises, and the proceeds of such sale or sales, to pay the same from time to time as received into the treasury of said city of Chicago in liquidation pro tanto of whatever sum or sums are or shall be found to be due and owing by said David A. Gage to said city until the whole shall be paid.

105 And in case the said net rents profits, income, and proceeds of sales shall be insufficient for this purpose, then to apply the said net rents, profits, income, and proceeds of sale in satisfaction of such parts of said indebtedness as said comptroller shall deem for the interest of said city until the whole shall be expended.

And upon the further trust that upon the payment and satisfaction of all said indebtedness, either with or out of the proceeds of said property, or otherwise, to reconvey to the said David A. Gage, his heirs or assigns, all of the said premises which may be left after the full payment of said indebtedness then remaining unsold, and to pay over to said David A. Gage, his heirs or assigns, any surplus proceeds in any manner derived from the said premises, or any part thereof, after deducting therefrom all just and proper charges and expenses attending the execution of this trust, including a fair and reasonable compensation to said trustee for his services in the premises: Provided, however, and it is expressly agreed by the said David A. Gage, that this conveyance is not to be in any sense a satisfaction of any part of said indebted-
106 ness, nor shall the same be taken as cause for any delay or interference with any other measures said city may have taken or may take to secure or to collect said indebtedness, or any part thereof.

And the said parties of the first part hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

And the said David A. Gage, for himeelf, his heirs, executors, and administrators, covenants and agrees, to and with the said party of the second part, his legal representatives or successors in trust, that at the time of the ensealing and delivery hereof, he, the said David A. Gage, is well seized of said premises in fee-simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form aforesaid, and that the same are free and clear from all liens, taxes, assessments, and incumbrances whatsoever, except as hereinbefore stated.

And it is further agreed and especially understood that in case of the death, resignation, removal from the said city of Chicago, or ina-
107 bility to act of the said party of the second part, then John Dekoven, of the said city of Chicago, shall be, and hereby is, appointed and made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

In case said real estate shall not be sold in accordance with the provisions hereinbefore set forth within the period of eight months from the date hereof, then said comptroller shall have the power to order a peremptory sale thereof on such terms as to him shall seem best for the interests of the said city of Chicago.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

D. A. GAGE. [SEAL.]
ELIZA M. GAGE. [SEAL.]

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Charles O. Henthorn, a notary public in and for and residing in said city of Chicago, do hereby certify that David A. Gage and Eliza M. Gage, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, appeared
108 before me this day in person and acknowledged that they signed, sealed, and delivered the said deed as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, privilege, advantage, and exemption under any and all homestead-exemption laws of the State of Illinois.

Given under my hand and notarial seal this 27th day of December, in the year of our Lord one thousand eight hundred and seventy-three.

[NOTARIAL SEAL.] CHARLES O. HENTHORN,
Notary Public.

I do hereby accept the trusts mentioned in the within deed this 30th day of December, A. D. 1873.

GEO. TAYLOR. [SEAL.]

(Endorsed:) David A. Gage et ux. to George Taylor, trustee, for the city of Chicago. Conveyance. State of Illinois, Cook County, ss: No.

142874. I certify this instrument was filed for record Dec. 30, A. D. 1873. Recorded in book 334 of records, page 357, January 5th, 1874. Jas. Stewart, recorder. Mattocks & Mason, Chicago, Ills.

109 *Exhibit B.*

Know all men by these presents that I, David A. Gage, of the city of Chicago, in the county of Cook, and State of Illinois, have sold, assigned, transferred, and delivered, and by these presents do sell, assign, transfer, and deliver, unto George Taylor, of said city, as trustee, all the bonds, bills, notes, accounts, and choses in action mentioned and described in Schedule A, hereto annexed; and I do hereby authorize and empower the said George Taylor, as trustee, to collect all of said bonds, bills, notes, accounts, and choses in action, or to sell and dispose of the same, or any part thereof, as in his judgment may appear best for my interest and the interest of the city of Chicago.

And I do hereby direct that any and all sums of money which may be realized from such collections or sales be paid over by said George Taylor to the city of Chicago, on account of and towards the liquidation of any indebtedness of mine to said city of Chicago by reason of any deficit in my accounts as late treasurer of said city.

And I hereby direct and request that such collections and sales shall be made as speedily as possible without detriment to the interests
110 of said city; and for the purpose of enabling the said George Taylor to do and perform what I have hereby authorized him to do, I hereby make and constitute him my attorney in fact, irrevocable, and do hereby authorize and empower him, in my name or otherwise, to do and perform as such trustee each and every act and thing which may be necessary to carry into effect the object of this transfer and sale as fully as I might or could do were these presents not executed.

And I hereby expressly agree that this conveyance is not to be in any sense a satisfaction of any part of my said indebtedness to said city, nor shall the same be taken as cause for any delay or interference with any other measures said city may have taken, may take, to secure or to collect said indebtedness, or any part thereof. The said George Taylor, as trustee, shall, with the concurrence and consent of myself and the comptroller of said city, be authorized to exchange any of the securities or evidences of indebtedness mentioned in said Schedule A for other securities or evidences of indebtedness, or for lands or other property, real or personal; the same, when such exchange shall have been made, to be subject to the provisions hereinbefore made for the disposition of the assets mentioned in said schedule. And said Taylor, as
111 such trustee, may, with the consent of said comptroller, turn over to said city as cash any and all of the vouchers of said city, or the bonds given by any bank which may come into his hands as such trustee.

In case of the death, resignation, refusal, or inability to act of the said Taylor, then and in that event John Dekoven shall succeed to the trusts herein and hereby imposed upon said George Taylor as trustee, as aforesaid, and shall have all the power and authority in the premises that are hereby given to or conferred upon said George Taylor.

Witness my hand and seal this twenty-seventh day of December, A. D. 1873.

D. A. GAGE. [SEAL.]

In the presence of—
B. G. CAULFIELD
JOHN MATTOCKS.

Schedule A.

Bonds of the Chicago & Great Western Railroad Company	$350,000
Life-insurance policy in National Life-Insurance Company of Montpelier, Vermont	10,000
Life-insurance policy in the Republic Life-Insurance Company of Chicago, Illinois	20,000
112 Life-insurance policy in the Equitable Life-Insurance Company of New York	15,000
Life-insurance policy in the National Life-Insurance Company of Washington, D. C	10,000
Life-insurance policy in the Washington Life-Insurance Company of New York	20,000
Stock in the Chicago Life-Insurance Company	5,000
$\frac{6}{21}$ interest in church property at Riverside, Illinois, the title to which is now in Henry Greenebaum.	
2 notes of C. L. Woodman & Co., dated Nov. 1st, 1873, at 6 & 9 mos., each $5,000	10,000
Vouchers of the city of Chicago, now in the hands of Mattocks & Mason, about	12,000
Certain bonds taken by David A. Gage, as city treasurer, to secure deposits, viz:	
1 bond of the Second National Bank of Chicago.	
1 bond of the Manufacturers' National Bank of Chicago.	
1 bond of A. C. Badger & Co., of Chicago.	
1 bond of the bank of Chicago.	

D. A. GAGE.

113 *Exhibit C.*

This indenture, made this twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-four, between the Chicago and Great Western Railroad Land Company, a corporation existing under and by virtue of the laws of the State of Illinois, party of the first part, and George Taylor, trustee of the city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, remised, released, sold, conveyed, and quitclaimed, and by these presents doth remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which said party of the first part hath in and to the following-described lots, pieces, or parcels of land situated in the county of Cook and State of Illinois, and known and described as follows, to wit:

114 Lots six hundred and fifty-six, (656,) in block three, (III;) lots seven hundred and forty-four, (744,) seven hundred and forty-five, (745,) seven hundred and forty-six, (746,) seven hundred and forty-seven, (747,) in block numbered seven, (VII;) lot thirteen hundred and two, (1302,) in block thirty-four, (XXXIV;) lot thirteen hundred and twenty-three, (1323,) in block thirty-five, (XXXV;) lot fourteen hundred and twenty-five, (1425,) in block thirty-nine, (XXXIX;) lots fifteen hundred and eight, (1508,) fifteen hundred and nine, (1509,) and fifteen hundred and ten, (1510,) in block forty-two, (XLII,) all in the third

142874. I certify this instrument was filed for record Dec. 30, A. D. 1873. Recorded in book 334 of records, page 357, January 5th, 1874. Jas. Stewart, recorder. Mattocks & Mason, Chicago, Ills.

109 *Exhibit B.*

Know all men by these presents that I, David A. Gage, of the city of Chicago, in the county of Cook, and State of Illinois, have sold, assigned, transferred, and delivered, and by these presents do sell, assign, transfer, and deliver, unto George Taylor, of said city, as trustee, all the bonds, bills, notes, accounts, and choses in action mentioned and described in Schedule A, hereto annexed; and I do hereby authorize and empower the said George Taylor, as trustee, to collect all of said bonds, bills, notes, accounts, and choses in action, or to sell and dispose of the same, or any part thereof, as in his judgment may appear best for my interest and the interest of the city of Chicago.

And I do hereby direct that any and all sums of money which may be realized from such collections or sales be paid over by said George Taylor to the city of Chicago, on account of and towards the liquidation of any indebtedness of mine to said city of Chicago by reason of any deficit in my accounts as late treasurer of said city.

And I hereby direct and request that such collections and sales shall be made as speedily as possible without detriment to the interests
110 of said city; and for the purpose of enabling the said George Taylor to do and perform what I have hereby authorized him to do, I hereby make and constitute him my attorney in fact, irrevocable, and do hereby authorize and empower him, in my name or otherwise, to do and perform as such trustee each and every act and thing which may be necessary to carry into effect the object of this transfer and sale as fully as I might or could do were these presents not executed.

And I hereby expressly agree that this conveyance is not to be in any sense a satisfaction of any part of my said indebtedness to said city, nor shall the same be taken as cause for any delay or interference with any other measures said city may have taken, may take, to secure or to collect said indebtedness, or any part thereof. The said George Taylor, as trustee, shall, with the concurrence and consent of myself and the comptroller of said city, be authorized to exchange any of the securities or evidences of indebtedness mentioned in said Schedule A for other securities or evidences of indebtedness, or for lands or other property, real or personal; the same, when such exchange shall have been made, to be subject to the provisions hereinbefore made for the disposition of the assets mentioned in said schedule. And said Taylor, as
111 such trustee, may, with the consent of said comptroller, turn over to said city as cash any and all of the vouchers of said city, or the bonds given by any bank which may come into his hands as such trustee.

In case of the death, resignation, refusal, or inability to act of the said Taylor, then and in that event John Dekoven shall succeed to the trusts herein and hereby imposed upon said George Taylor as trustee, as aforesaid, and shall have all the power and authority in the premises that are hereby given to or conferred upon said George Taylor.

Witness my hand and seal this twenty-seventh day of December, A. D. 1873.

D. A. GAGE. [SEAL.]

In the presence of—
B. G. CAULFIELD
JOHN MATTOCKS.

Schedule A.

Bonds of the Chicago & Great Western Railroad Company...$350,000
Life-insurance policy in National Life-Insurance Company of Montpelier, Vermont 10,000
Life-insurance policy in the Republic Life-Insurance Company of Chicago, Illinois..... 20,000
112 Life-insurance policy in the Equitable Life-Insurance Company of New York..... 15,000
Life-insurance policy in the National Life-Insurance Company of Washington, D. C 10,000
Life-insurance policy in the Washington Life-Insurance Company of New York..... 20,000
Stock in the Chicago Life-Insurance Company..... 5,000
$\frac{8}{21}$ interest in church property at Riverside, Illinois, the title to which is now in Henry Greenebaum.
2 notes of C. L. Woodman & Co., dated Nov. 1st, 1873, at 6 & 9 mos., each $5,000 10,000
Vouchers of the city of Chicago, now in the hands of Mattocks & Mason, about 12,000
Certain bonds taken by David A. Gage, as city treasurer, to secure deposits, viz:
1 bond of the Second National Bank of Chicago.
1 bond of the Manufacturers' National Bank of Chicago.
1 bond of A. C. Badger & Co., of Chicago.
1 bond of the bank of Chicago.

D. A. GAGE.

113 *Exhibit C.*

This indenture, made this twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-four, between the Chicago and Great Western Railroad Land Company, a corporation existing under and by virtue of the laws of the State of Illinois, party of the first part, and George Taylor, trustee of the city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, remised, released, sold, conveyed, and quitclaimed, and by these presents doth remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which said party of the first part hath in and to the following-described lots, pieces, or parcels of land situated in the county of Cook and State of Illinois, and known and described as follows, to wit:

114 Lots six hundred and fifty-six, (656,) in block three, (III;) lots seven hundred and forty-four, (744,) seven hundred and forty-five, (745,) seven hundred and forty-six, (746,) seven hundred and forty-seven, (747,) in block numbered seven, (VII;) lot thirteen hundred and two, (1302,) in block thirty-four, (XXXIV;) lot thirteen hundred and twenty-three, (1323,) in block thirty-five, (XXXV;) lot fourteen hundred and twenty-five, (1425,) in block thirty-nine, (XXXIX;) lots fifteen hundred and eight, (1508,) fifteen hundred and nine, (1509,) and fifteen hundred and ten, (1510,) in block forty-two, (XLII,) all in the third

division (3rd) in Riverside, Cook County, and State of Illinois; also lots two, (2,) three, (3,) four, (4,) five, (5,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) and seventeen, (17,) in block one, (I;) lots eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-four, (24,) and twenty-five, (25,) in block two, (II;) lots twenty six, (26,) twenty-seven, (27,) twenty-eight, (28,) twenty-nine, (29,) and thirty, (30,) in block three, (III,) all in the fourth division in Riverside, Cook County, and State of Illinois:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or
115 equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof the said party of the first part has caused these presents to be executed by its president and its secretary, and its corporate seal to be hereunto affixed, and attested by its secretary, the day and year first above written.

CHICAGO AND GREAT WESTERN R. R. LAND COMPANY. SEAL.

EMERY E. CHILDS, [SEAL.]
President,
LEVERETT W. MURRAY, [SEAL.]
Secretary,
Of the Chicago and Great Western Railroad Land Company.

Signed, sealed, and delivered in the presence of—

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Charles H. Lawrence, a notary public in and for said county, in the State aforesaid, do hereby certify that Emery E. Childs, president of the Chicago and Great Western Railroad Land Company, and Leverett
116 Murray, secretary of the same, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they officially signed, sealed, and delivered the said instrument as their free and voluntary act and the free and voluntary act of said company, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-second day of July, A. D. 1874.

[NOTARIAL SEAL.] CHAS. H. LAWRENCE,
Notary Public.

(Endorsed:) Quitclaim deed to Geo. Taylor. Entered this day of , A. D. 18 . , county clerk.

No. 181168.

STATE OF ILLINOIS,
County of Cook, ss:

This instrument was filed for record in the recorder's office of Cook

County aforesaid on the 23rd day of July, A. D. 1874, at o'clock m., and recorded in book 254 of records, on page 316, July 30th, 1874.

JAS. STEWART,
Recorder.

117 *Exhibit D.*

This indenture, made this twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-four, between the Chicago & Great Western Land Company, a corporation having its principal office in the city of Chicago, in the county of Cook, and State of Illinois, party of the first part, and George Taylor, trustee of the city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of dollars, in hand paid by the said party of the second part, the receipt thereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, hath remised, released, sold, conveyed, and quitclaimed, and by these presents doth remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which said party of the first part hath in and to the following described lots, pieces, or parcels of land situated in the county of Cook, and State of Illinois, and known and described as follows, to wit: Lots two hundred and twenty-six (226) & two hundred and twenty-nine, (229,) in block two, (II;) lots four hundred and forty-three (443) and four hundred and fifty-eight, (458,) in block nine, (IX;) lots four hundred and seventy-seven, (447,) four hundred and seventy-eight, (478,) and four hundred and seventy-nine, (479,) in block ten, (X;) lots five hundred and forty-three, (543,) five hundred & forty-four,
118 (544,) five hundred & forty-five, (545,) & five hundred & forty-six, (546,) in block eleven, (XI;) lots five hundred & thirty-three, (533,) five hundred & thirty-four, (534,) and five hundred & thirty-five, (535,) in block twelve, (XII;) lot five hundred & thirteen, (513,) in block thirteen, (XIII,) all in the second division in Riverside; also lots five hundred & seventy-seven, (577,) five hundred & seventy-eight, (578,) five hundred & seventy-nine, (579,) five hundred & eighty, (580,) and five hundred & eighty-one, (581,) in block sixteen, (XVI,) in the addition to the second division in Riverside; also lots six hundred & thirty-four, (634,) six hundred & thirty-five, (635,) six hundred and thirty-six, (636,) six hundred & forty, (640,) six hundred & forty one, (641,) six hundred & forty-two, (642,) six hundred & forty-three, (643,) six hundred and forty-four, (644,) six hundred & forty-five, (645,) six hundred and fifty-three, (653,) six hundred and fifty-four, (654,) six hundred and fifty-five, (655,) in block two, (II,) all in the third (3rd) division in Riverside, Cook County, and State of Illinois: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs & assigns, forever.

And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege, advantage, & exemp-
119 tion under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homestead from sale on execution or otherwise.

In witness whereof, the said party of the first part hath hereunto set its corporate seal and caused the presents to be signed by its president & secretary, the day and year first above written.

The Chicago and Great Western Railroad Land Company, [SEAL.]

THE CHICAGO & GREAT WESTERN R. R. LAND COMPANY. SEAL.

By EMERY E. CHILDS, [SEAL.]
President.
By LEVERETT W. MURRAY, [SEAL.]
Secretary.

Signed, sealed, and delivered in the presence of—

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss :

I, Chas. H. Lawrence, a notary public in & for said city, in the said county, in the State aforesaid, do hereby certify that Emery E. Childs, president of the Chicago and Great Western Land Company, and Leverett W. Murray, secretary of the same, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they officially signed, sealed, and delivered the said instrument as their free and voluntary act, and the free and voluntary act of said company, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

120 Given under my hand and notarial seal this twenty-second day of July, A. D. 1874.

CHAS. H. LAWRENCE, NOTARY PUBLIC, CITY OF CHICAGO, ILLS.

CHAS. H. LAWRENCE.
Notary Public.

No. 181166.

STATE OF ILLINOIS,
County of Cook, ss :

This instrument was filed for record in the recorder's office of Cook County, aforesaid, on the 23rd day of July, A. D. 1874, at o'clock, m., and recorded in book 254 of records, on page 314, July 30th, 1874.

JAS. STEWART,
Recorder.

Exhibit E.

This indenture, made this twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-four, between the Chicago & Great Western Railroad Land Company, a corporation having its principal office in the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and George Taylor, trustee, of the city of Chicago, in the county of Cook, and State of Illinois, party of the second part, witnesseth :

That the said party of the first part, for and in consideration of the sum of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the party of the second part forever released and discharged therefrom, hath remised, released, sold, conveyed, and quitclaimed, and by these presents doth re-
121 mise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title,

interest, claim, and demand which said party of the first part hath in and to the following-described lots, pieces, or parcels of land, situated in the county of Cook and State of Illinois, and known and described as follows, to wit:

The southwest quarter of section thirty-five, (35,) township thirty-nine N., range twelve (12) east, of 3rd p. m., and situated in the town of Riverside, county of Cook, and State of Illinois: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

And the said party of the first part hereby espressly waives and releases any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homestead from sale on execution or otherwise.

In witness whereof the said party of the first part hath hereunto set its corporate seal and caused these presents to be signed by its
122 president and secretary the day and year first above written.

Signed, sealed, and delivered in the presence of—

The Chicago and Great Western [seal.] Railroad Land Company, [SEAL.]

THE CHICAGO & GREAT WESTERN LAND COMPANY. SEAL.

By EMERY E. CHILDS, [SEAL.]
President.

By LEVERETT W. MURRAY, [SEAL.]
Secretary.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Chas. H. Lawrence, a notary public in and for said city, in said county, in the State aforesaid, do hereby certify that Emery E. Childs, president of the Chicago and Great Western Railroad Land Company, and Leverett W. Murray, secretary of the same, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they officially signed, sealed, and delivered the said instrument as their free and voluntary act, and the free and voluntary act of said company for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 22nd day of July, A. D. 1874.

CHAS. H. LAWRENCE, NOTARY PUBLIC, CITY OF CHICAGO.

CHAS. H. LAWRENCE,
Notary Public.

No. 181167.

STATE OF ILLINOIS,
County of Cook, ss:

123 This instrument was filed for record in the recorder's office of Cook County aforesaid on the 23rd day of July, A. D. 1874, at o'clock m., and recorded in book 254 of records, on page 315, July 30, 1874.

JAS. STEWART,
Recorder.

Exhibit F.

This indenture, made this twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-four, between the Chicago & Great Western Railroad Land Company, a corporation having its principal office in the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and George Taylor, trustee of the city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, hath remised, released, sold, conveyed and quit-claimed, and by these presents doth remise, release, sell, convey and quit-claim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which said party of the first part hath in and to the following described lots, pieces or parcels of land, situated in the county of Cook and State of Illinois, and known and described as follows, to wit:

Lots forty-three, (43,) forty-four, (44,) forty-five, (45,) forty-six,
124 (46,) forty-seven, (47,) forty-eight, (48,) forty-nine, (49,) fifty-one, (51,) & fifty-two, (52,) in block four, (IV;) lots fifty-five, (55,) fifty-six, (56,) fifty-seven, (57,) fifty-eight, (58,) fifty-nine, (59,) sixty, (60,) sixty-one, (61,) sixty-two, (62,) sixty-three, (63,) sixty-four, (64,) & sixty-five, in block five, (V;) lots sixty-six, (66,) sixty-seven, (67,) sixty-eight, (68,) seventy-one, (71,) seventy-two, (72,) seventy-three, (73,) seventy-four, (74,) seventy-five, (75,) seventy-six, (76,) & seventy-seven, in block six, (VI;) lots seventy eight, (78,) seventy-nine, (79,) eighty, (80,) eighty-one, (81,) eighty-two, (82,) eighty-three, (83,) eighty-four, (84,) eighty-five, (85,) eighty-six, (86,) eighty-seven, (87,) in block seven, (VII;) lots ninety (90) to ninety-eight, (98,) both inclusive, and lot one hundred & one, (101,) in block eight, (VIII;) lots one hundred & four (104) to one hundred & twelve, (112,) both inclusive, also lots one hundred & fifteen (115) & one hundred and sixteen, (116,) in block number nine, (IX,) all in the fourth division in Riverside, Cook County, and State of Illinois.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

And the said party of the first part hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under and by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

125 In witness thereof the said party of the first part hath hereunto set its corporate seal and caused these presents to be signed by its president and secretary the day and year above written.

Signed, sealed, & delivered in the presence of—

The Chicago and Great Western [seal] Railroad Land Company,

[SEAL.]

By EMERY E. CHILDS, *President*, [SEAL.]

By LEVERETT W. MURRAY, *Secretary*. [SEAL.]

{ THE CHICAGO AND GREAT WESTERN
{ R. R. LAND COMPANY. SEAL.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Chas. H. Lawrence, a notary public in and for the said county, in the State aforesaid, do hereby certify that Emery E. Childs, president of the Chicago and Great Western Railroad Land Company, and Leverett W. Murray, secretary of the same, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they officially signed, sealed, and delivered the said instrument as their free and voluntary act and the free and voluntary act of said company for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notorial seal this twenty-second day of July, A. D. 1874.

{ CHAS. H. LAWRENCE, NOTARY PUBLIC. SEAL. }

CHAS. H. LAWRENCE,
Notary Public.

126 No. 181164.

STATE OF ILLINOIS,
County of Cook, ss:

This instrument was filed for record in the recorder's office of Cook County aforesaid on the 23rd day of July, A. D. 1874, at o'clock m., and recorded in book 254 of records, on page 331, July 30th, 1874.

JAS. STEWART,
Recorder.

Exhibit G.

This indenture, made this twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-four, between the Chicago & Great Western Railroad Land Company, a corporation having its principal office in the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and George Taylor, trustee of the city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, hath remised, released, sold, conveyed, and quit-claimed, and by these presents doth remise, release, sell, convey, and quit-claim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which said party of the first part hath in and to the following-described lots, pieces, or parcels of land, situated in the county of Cook and State of Illinois, and known & described as follows, to wit:

127 Lots one hundred and twenty-eight, (128,) one hundred and twenty-nine, (129,) and one hundred and thirty, (130,) in block eleven (XI;) lots one hundred and thirty-eight, (138,) one hundred and thirty-nine, (139,) one hundred and forty-one, (141,) one hundred and forty-three, (143,) one hundred and forty-four, (144,) one hundred and forty-five, (145,) and one hundred and forty-six, (146,) in block twelve, (XII,) all in the fourth division of Riverside, county of Cook, State of Illinois.

To have & to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

And the said party of the first part hereby exp'essly waives and releases any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from the sale on execution or otherwise.

In witness whereof the said party of the first part hath hereunto set its corporate seal and caused these presents to be signed by the president & secretary the day & the year first above written.

Signed, sealed, & delivered in the presence of—

The Chicago and Great Western [seal] Railroad Land Company, [seal.]

THE CHICAGO & GREAT WESTERN R. R. LAND COMPANY. SEAL.

By EMERY E. CHILDS, [SEAL.]
President.

By LEVERETT W. MURRAY, [SEAL.]
Secretary.

128 STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Chas. H. Lawrence, a notary public in and for said city, in the said county, in the State aforesaid, do hereby certify that Emery E. Childs, president of the Chicago & Great Western Railroad Land Company, and Leverett W. Murray, secretary of the same, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act and the free and voluntary act of said company, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notorial seal this twenty-second day of July, A. D. 1874.

CHAS. H. LAWRENCE, NOTARY PUBLIC. SEAL.

CHAS. H. LAWRENCE,
Notary Public.

No. 181165.

STATE OF ILLINOIS,
County of Cook, ss:

This instrument was filed for record in the recorder's office of Cook County aforesaid, on the 23rd day of July, A. D. 1874, at o'clock, m., and recorded in book 254 of records, on page 332, July 30th, 1874.

JAS. STEWART,
Recorder.

129 (Endorsed:) Filed June 7th, 1875. Wm. H. Bradley, clerk.

130 Afterwards, to wit, on the 23rd day of June, A. D. 1875, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE CITY OF CHICAGO
vs
DAVID A. GAGE ET AL., } In chancery. Original bill.

and

WILLIAM T. AYERS
vs.
THE CITY OF CHICAGO ET AL. } In chancery. Cross-bill.

Now comes the defendant in the cross-bill, The City of Chicago, by T. L. Dickey, esq., its solicitor, and moves this court to remand this cause to the superior court of Cook County, Illinois.

Afterwards, to wit, on the 29th day of June, A. D. 1876, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, judge, is the following entry, to wit:

THE CITY OF CHICAGO
vs.
DAVID A. GAGE ET AL. } In chancery.

Now come the parties, by their solicitors, and now comes on to be heard the motion of the complainant, The City of Chicago, to remand this cause to the superior court of Cook County, Illinois, and after hearing the same, the court not being now sufficiently advised in the
131 premises, takes said cause under advisement, with leave to the parties to furnish briefs.

Afterwards, to wit, on the 28th day of October, A. D. 1875, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the follnwing entry, to wit:

THE CITY OF CHICAGO
vs.
DAVID A. GAGE, ELIZA M. GAGE, GEORGE Taylor, and William T. Ayers, exr., &c., } Chancery. Original bill.

and

WILLIAM T. AYERS, EXR., &C.,
vs.
THE CITY OF CHICAGO, DAVID A. GAGE, ELIZA M. Gage, and George Taylor. } Cross-bill.

Now come the parties, by their solicitors, and the court having considered, and being now sufficiently advised upon the motion of the complainant in the original bill herein to remand this cause to the superior court of Cook County, Illinois, sustains said motion.

It is thereupon considered, adjudged, and decreed by the court that this cause be remanded to the superior court of Cook County, Illinois, at the costs of said William T. Ayers, exr., &c.

And thereupon said William T. Ayers, exr., &c., prays an appeal to the Supreme Court of the United States, which is allowed upon
132 giving bond herein in the penal sum of one thousand dollars, with security, to be approved by the court; which is accordingly done.

And afterwards, to wit, on the 29th day of October, A. D. 1875, said William T. Ayers, exr., &c., filed in said clerk's office his bond in appeal in said entitled cause; which said bond is in the words and figures following, to wit:

Appeal-bond.

Circuit court of the United States for the northern district of Illinois.

CITY OF CHICAGO
vs.
GEORGE TAYLOR, DAVID A. GAGE, ELIZA M. Gage, Wm. T. Ayers, executor, &c. } Bill.

WILLIAM T. AYERS, EXECUTOR, &C.,
vs.
CITY OF CHICAGO, GEORGE TAYLOR, DAVID A. Gage, Eliza M. Gage. } Cross-bill.

Know all men by these presents that William T. Ayers, executor of the last will and testament of Charles P. Gage, late of Mobile, Alabama, deceased, as principal, and Obadiah Jackson and Charles L. Woodman, both of Chicago, in said northern district of Illinois, as securities, are held and firmly bound unto the City of Chicago, George Taylor, David A. Gage, and Eliza M. Gage, in the full and just sum of one thousand dollars, to be paid to said City of Chicago, George Taylor, David
133 A. Gage, and Eliza M. Gage, their certain attorney, heirs, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas, lately, at a term of the circuit court of the United States for the northern district of Illinois, begun and holden on the first Monday of October, A. D. 1875, and on, to wit, the twenty-eighth day of October, A. D. 1875, being one of the days of said October term of said court, in a cause depending in said court, on the chancery side thereof, between The City of Chicago, complainant, and George Taylor, David A. Gage, Eliza M. Gage, and William T. Ayers, executor, &c., defendants, (the said William T. Ayers, executor, &c., having filed in said cause his certain cross-bill of complaint against the said City of Chicago, George Taylor, David A. Gage, and Eliza M. Gage, defendants, therein,) an order of said circuit court was entered remanding the cause aforesaid to the superior court of Cook County, and the said William T. Ayers, executor as aforesaid, having prayed for and obtained an appeal to the Supreme Court of the United States, and having obtained a cita-
134 tion directed to the said City of Chicago, George Taylor, David A. Gage, and Eliza M. Gage, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said William T. Ayers, executor, &c., shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM T. AYERS, [SEAL.]
Executor of the last Will and Testament of Charles P. Gage, deceased,
By OBADIAH JACKSON, [SEAL.]
His Attorney.
OBADIAH JACKSON. [SEAL.]
CHARLES L. WOODMAN. [SEAL.]

Witness:
M. W. FULLER.

Approved: H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Oct. 29, 1875. Wm. H. Bradley, clk.

135 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein The City of Chicago is the complainant and David A. Gage et al. are the defendants, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 7th day of October, A. D. 1876, and of our Independence the 101st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To the City of Chicago, George Taylor, David A. Gage, & Eliza M. Gage, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal prayed in the circuit court of the United States for the northern district of Illinois, wherein William T. Ayers, executor, &c., is appellant, and you, The said City of Chicago, George Taylor, David A. Gage, and Eliza M. Gage are appellees, to show cause, if any there be, why the judgment in the said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Henry W. Blodgett, judge of the district court of the United States, and sitting as judge of the circuit court of the United States for the northern district of Illinois, this 29th day of October, in the year of our Lord one thousand eight hundred and seventy-five.

H. W. BLODGETT, *Judge.*

137 We hereby acknowledge service of the within citation by the receipt of a copy of same this sixth day of November, A. D. 1875.

T. LYLE DICKEY,
Sol. for the City of Chicago.
GEO. TAYLOR.

[Endorsed:] In circuit court of the United States, northern dist. of Illinois. City of Chicago et al., appellees, ats., William T. Ayers, exor., &c., appellants. Citation.

[Indorsement on cover:] No. 856. William T. Ayers, executor of Charles P. Gage, deceased, appellant, vs. The City of Chicago, George Taylor, David A. Gage, & Eliza M. Gage. N. Illinois, C. C. U. S. Filed 16th October, 1876.

My invention consists primarily in the extension of the flange for the support of the mould-board, in such a shape as to form a broad,
30 rounded neck or breast, serving as a shield or guard, to prevent the earth from falling over the mould-board at this point, and to prevent the weeds and trash from lapping around the neck or throat, out of reach of the furrow-slice. It further consists in a novel construction of the landside of the plow to adapt it, as employed in breaking, to throw the weeds and trash outward therefrom, so that they may more readily be carried around the rounded throat by the furrow-slice; and also, as employed in cultivating, to press the earth up to the plants.

Also in several novel constructions of mould-board, adapted for employment for the different purposes for which they are intended, in connection with the other parts of the plow.

Also in novel modes of applying and securing the mould-board and fastening the slide or landside-bar; in a novel mode of fastening the handles, and in the provision of a movable extension-plate, to adapt the plow to work at more than the ordinary depth.

31 Figure 1 is a plan of a plow illustrating my invention.

Figure 2 is an elevation of the mould-board side of the plow.

Figure 3 is a rear-end elevation of the plow.

Figure 4 is a side elevation of the frame or casting hereinafter described.

Figure 5 is a front view of the same.

Figure 6 is a perspective view of the mould-board, showing the fastening-devices on the inner side thereof.

Figure 7 is a perspective view of the slide or landside-bar.

Figure 8 is a perspective view of the removable extension piece, hereinafter referred to.

Figures 9, 10, and 11 are perspective views of different forms of mould-boards applicable to this plow. Similar letters of reference indicate corresponding parts in the several figures.

In the drawings, A represents the frame or casting, to which
32 are secured the mould-board, B, shank or point, C, and landside bar or slide, D. The external exposed surface of said frame A forms the landside proper, as shown in Fig. 3. The opposite outer surface of said frame forms a bed, upon which the mould-board is fitted and secured, as shown in Fig. 2, the form of this surface adapting it to receive the different forms of mould-boards shown, or any other desired form, as regards external surface, with equal facility.

On the top of the frame A is formed the standard or projection A′, to which the beam I is secured by means of the cuff or staple H and nuts *h*.

The front edge E of the mould board is extended and sharpened, so that, projecting in front of the frame, it forms the coulter or cutter.

At *e*, fig. 2, the cutter may be said to terminate, inasmuch as to that point the edges of the mould-board B and frame A become coincident; and thence they run back in parallelism, the one directly against and above the other, as far as the rear terminus of that side of frame A.

33 By this construction, the iron front of the plow is made to present a continuous curved surface above the cutter, said surface flaring outward, in conformity or agreement with the mould-board. The upper part of the frame A being thus made to unite with the mould-board to form a continuous deflecting surface on the one side, has the two sides of its upper portion joined by a short curve in front, and thus so much of the said frame A as extends above the point *e*, serves to form a rounded neck or breast, *a*. This breast not only prevents the earth from falling backward over the top of the mould-board, but it

prevents trash, weeds, &c., from clinging to the plow between the top *e* of the cutter and the beam I.

The landside of frame A has a curvature, giving it an inward inclination from the bottom to near its mid-height; thence the landside has an outward inclination, which increases toward the rear.

34 It will be seen from the context and by reference to fig. 8 that while the landside of the breast *a* has a comparatively slight departure from parallelism of the line of draught, the opposite or mould-board side of said breast stands at a considerable angle to said line; hence, in operation, the vegetation and trash which are caught upon the breast *a* are drawn or forced from the landside by the mould-board side of said breast and cast off at the mould-board side of the plow, so as to be covered by the turned earth. Thus my improvement effectually prevents the choking, which constitutes a serious impediment in working other plows. The outward inclination of the landside of the breast *a* gives it a tendency to throw the earth toward the growing plants on that side, and therefore, when used for cultivating, the plow subserves the purpose of a hoe. When the plow is used for breaking said inclination serves to throw aside the weeds and trash, and thus adapt them to be more readily drawn around the breast by the furrow-slice.

35 The obliquity or inward inclination from the bottom of the land-side gives the plow a firm hold upon the ground, preventing it from jumping or rising out of its proper working position, and moles up the earth on the side.

The share or point C is attached by one or more bolts, as at *c*, to the forward end of the mould-board side of the frame A. Shoulders *b* on the mould-board may be employed to brace the share in the direction of its resistance.

J, figs. 1 and 3, is a brace rod, the ends of which are bent so as to form two reflexed hooks, *jj*, which respectively engaged with staples $j^1 j^1$, on the inside of the mould board and landside.

b^1 is a staple fixed rigidly to the forward end of the mould-board B, and passed through a slot, a^1, in the forward end of frame A, wherein said staple is held by a key, b^2, fig. 3. To secure the mould-board upon its bed on the frame A, the brace-rod J is first hooked to the staples $j^1 j^1$, and then the staple b^1 is passed through the slot a^1 and keyed.

36 The brace-rod J and staple b^1, in conjunction with a stud, b^1, projecting from the mould-board into a corresponding hole, a^2, in the mould board side of frame A, serve to very firmly and securely connect the mould-board and frame together. The reflexed form of the hooks *j j* of the brace-rod J renders their disengagement from the staples $j^1 j^1$ impossible when the mould-board is secured in position. This brace-rod is distinguishable from the common brace-rod from the fact that *that* while one end of the latter is hooked or bent into a curve, the other end is bent at a right angle, and thus endangers its detachment.

The forward end of the "slide" or landside-bar D is held by the insertion of its hook-shaped projection *d* into the slot a^3 of the frame A. The rear end of said slide or bar D is provided with a staple, d^1, which is passed unto the vertical slot a^4 in the frame A, and held therein by a horizontal key, d^2, which is adjustable in the notches a^5, on the inner surface of the landside.

37 When the base of the slide, D, has worn away, the slide may be lowered; the key, d^2, and notches, a^5, enabling the staple, d^1, to be held in any position to which it may be desired to adjust it in the slot, a^4. On account of the position of the staple, d^1, on the slide, D,

the bearings of the former are not subject to injurious friction with the earth. It should also be stated that the bottom of the frame, A, is protected from such friction by the projection of the share and slide below its lower edges.

The above-described devices for fastening the slide, D, are cheap, simple, and durable.

Of the plow-handles, the beam-handle, G', is fastened to the landside by a bolt, g, and just above this bolt the handles are fastened together by a bolt, g^1. The handles are braced by a rod, K, extending from the beam. By constructing and fastening the handles in this manner, like the beam, they are more easily adjusted and detached; 38 better adapted to the different sized plows, and also in addition to these two advantages we have another, the doing away with the necessity of bending or shaping the mould-board handle to fit the form of the mould board, that handle, in this instance, being straight. The frame, A, is especially suited for use in connection with the various kinds of mould-boards commonly employed, whether made of cast or wrought iron, steel, or wood, for breaking, fallowing, trenching, ditching, or cultivating; and it also admits of the application of steel scrapers or skimmers for cotton and other crops. Hence the above described method of attaching the handles is peculiarly adapted to admit of the extensive transformation above alluded to. The frame, A, adds greatly to the strength of the plow without making it inconveniently weighty.

The removable extension-piece, F, Fig. 8, of wood or metal, 39 bolted to the upper edge of the mould-board, B, and frame, A, adapts the plow to turn or furrow with equal effect while working to a greater depth than usual, so that it may be changed from a two horse to a three or four horse plow at will. The mould-board shown in Fig. 10, when applied to the frame, A, presents a much wider base than top.

In operation this mould-board burrows up the earth and allows about two-thirds of the earth to fall back into the furrow, while the remainder rising along the line of the cutting edge is scattered over the surface beyond the furrow, and smothers up the grass, &c.

In the second operation this form of plow gives the crop a small quantity of earth, entirely covering the grass which grows around and between the plants. This form is also a subsoil-plow of the first magnitude, and this plow, with this form of mould-board, does the 40 work of both plow and hoe in the cultivation of crops when young.

The mould-board represented in Fig. 11 is employed as a scraper or skimmer for cotton and similar crops, and is made of steel in the usual manner. The share is removed for its attachment, which is made by bolts passing through the perforations at its front end and corresponding ones in the frame, it being so bent as to correspond with the mould-board supporting flange of the frame. By the duplication of the holes through which its attaching-bolts pass, as shown, the similar formation of both of its ends and its attachment as described, it is adapted to be reversed when one edge becomes worn.

The plow provided with these different forms of mould boards is an article of manufacture and merchandise, they being severally used with it for different purposes as stated.

Having thus described my invention, the following is what I claim as new herein, and desire to secure by letters patent:

41 1. A plow-frame or casting, A, having a flange for the support of the mould-board, constructed as represented and described

for the purpose of adapting it to support any desired form of mould-board as set forth.

2. A plow-frame or casting, A, having a neck or breast, *a*, constructed substantially as herein described, and serving to prevent the accumulation of trash, &c., between the cutting edge and the beam.

3. A plow having its landside constructed as herein represented and described for the purposes set forth.

4. The combination with the mould-board, B, of the coulter or cutter, E, forming a part of the same, as described, for the purposes set forth.

5. The brace rod, J, reflexed at both ends, as described, and employed in conjunction with the staples, j^1, b^1, and key, b^2, to connect the frame, A, and mould-board, B, substantially as set forth.

6. The combination with the slide or landside bar, D, of the
42 hook-shaped projection, *d*, staple, d^1, key, d^2, and notches, a^5, for adjustably securing said slide to the frame, A, as set forth.

7. The handles G G′, both attached to the landside-side of the plow, as represented and described, for the purposes set forth.

8. The removable extension-piece F, applied substantially as and for the purpose set forth.

9. The mould-board B, fig. 10, formed for the purposes set forth.

10. The mould-board B, fig. 11, adapted for support on the frame A, and to be removed and reversed as represented and described.

GEORGE WATT.

Witnesses:
R. A. WILLIAMS,
E. G. KNIGHT.

Thereupon upon the same day, to wit, on the 8th day of August, 1870, a subpœna in chancery was issued, which with the return thereon is as follows:

43 *Chancery subpœna.*

UNITED STATES OF AMERICA,
District of Virginia, ss:

The President of the United States of America to P. H. Starke, greeting:

We command you, and every one of you, that you appear before our judges of our circuit court of the United States of America for the district of Virginia, at the court room in the custom house in the city of Richmond, in said district, on the first Monday in the month of September next, to answer the bill of complaint of George Watt, this day filed in the clerk's office of said court, in said city of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

44 To the marshal of the district of Virginia to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 8th day of August, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the 94th.

[SEAL.] W. H. BARRY, *Clerk.*

MEMORANDUM.—The above-named defendent is notified that unless he enter his appearance in the clerk's office of said court, at Richmond

aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

W. H. BARRY, *Clerk.*

45 And at another day, to wit, at rules held in the clerk's office of said court on the first Monday in September, 1870.

This day came the complainant, by his counsel, and it appearing that the subpœna in this cause has been duly executed on the defendent, and said defendent having failed to enter his appearance, it is ordered that the complainant's bill be taken for confessed against the said defendent at the next rules unless said defendant shall file his plea, answer, or demurrer at that time.

At which day, to wit, at rules held as aforesaid on the first Monday in October, 1870, the defendant still failing to appear, on motion of the complainant his bill is taken for confessed against the defendant and this cause set for hearing at the next term.

The following affidavits were filed January 17th, 1871.

46 Circuit court of the United States for the eastern district of Virginia.

GEORGE WATT
vs. } Affidavit.
P. H. STARKE.

J. T. Rouse maketh oath and saith that the plough delivered by him to George Watt of the city of Richmond, as one of P. H. Starke's plows, was bought by this deponent of the said P. H. Starke of said city, or at the store of said Starke in said city.

Said plough was marked and branded at the time when this deponent bought it with the name of P. H. Starke, and his number on the beam; and had tied to it one extra point, one weeding mould board, and one wrench; with Mr. Starke's card tied to it, and my name marked on the card.

I took a bill for it at the time and paid the amount of the bill
47 to Mr. Starke aforesaid, or some one in his store, and directed the plough to be sent to Mr. Johnston's stable, when I delivered it to Mr. George Watt aforesaid; and with the plough delivered the bill for the same also to Mr. George Watt.

The plough shown me to-day had my name on Mr. Starke's card tied to it, and is the plough above mentioned which I bought as aforesaid in or about the year 1869.

And further this deponent saith not.

J. T. ROUSE.

Sworn and subscribed before me this 29th day of September, in the year 1870.

[SEAL.]

J. A LYNHAM,
U. S. Commissioner, District of Va.

48 Circuit court of the United States for the district of Virginia.

GEORGE WATT
vs. } Affidavit.
P. H. STARKE.

William S. Sumner maketh oath and saith that he is a mechanic, and

that he has been engaged in business in that capacity for more than twenty years; that he has examined a plough shown to him by the said George Watt as one of the ploughs made and sold by the defendant, P. H. Starke, above named, and that he, this deponent, has very carefully compared said plough with the patents exhibited to him by the said George Watt, who states that said patents were obtained by him from the Patent Office in Washington, under the seal of said office, one of which patents bears date the 9th day of December, in the year
49 1856; another the 2nd day of August, in the year 1859; and a third on the 17th day of August, in the year 1869; and that he, this deponent, is of opinion that the plough shown him as Starke's plough as aforesaid is a distinct and clear infringement of the patent first above mentioned in this respect: that the mold-board in the plough shown as Starke's plough commences to turn over the sod from a point, A, in drawings of the plough or near it; that is to say, from a point corresponding with point A in the drawing annexed to the Watt's patent, and "from this point the upper edge of the mold-board inclines towards the turned furrow," as in the plough of Watt, "continuing to the tail of the mould-board."

This deponent further saith that the said plough, called Starke's plough is an infringement of the second patent above mentioned, bearing
50 date the 2nd day of August, in the year 1859, in the following respect, to wit, that said Starke has extended the width of the throat of his plough from the original narrow throat in the helve to keep it from choking, as is the case of the Watt plough; and this deponent further saith that said plough called Starke's plough is a plain infringement of the third patent above mentioned bearing date the 17th day of August, in the year 1869, in this respect, to wit, that the mould-board and frame or helve in what is called the Starke's plough is formed of two parts as is the case with Watt's plough, and when the upper part is removed the remaining part is the same in principle as the Watt plough, but the mould-board of the Watt plough, described in the specification annexed to the said
51 third patent above mentioned as mould-board number 10, presenting a much wider bottom or base than top, and doing its work in precisely the same manner, is the same in all respects in Mr. Starke's plough as that in the Watt plough above mentioned and patented by the said George Watt.

This deponent further saith that he has been engaged in his said employment as a mechanic for more than 20 years as aforesaid in the business of making and constructing ploughs in the city of Richmond, and that he never saw or heard of a plough so far as the principle patented by said Watt or described in his said patents is concerned, until the said George Watt invented his improvements; and he believes the inventions claimed by Mr. Watt aforesaid in his patents to have been, at the time of his invention, entirely new. About the great usefulness of the said improvements he has no doubt.

52 This deponent further states that with the aid of the descriptions or specifications and drawings annexed to the said several patents shown him by Mr. Watt as aforesaid, that he, this deponent, would be enabled, and that any one well skilled in the art of making and constructing ploughs would be enabled without difficulty to make and construct a plough or ploughs like those patented by the said George Watt.

And further this deponent saith not.

WILLIAM S. SUMNER.

Sworn and subscribed before me this 28th day of September, in the year 1870, by Wm. S. Sumner.

[SEAL.] J. A. LYNHAM,
U. S. Commissioner, District of Virginia.

53 Circuit court of the United States for the district of Virginia.

GEORGE WATT *vs.* P. H. STARKE. } Affidavit.

George Watt, the complainant in the above case, maketh oath and saith that the patent exhibited by him in this suit and shown by him to Wm. S. Sumner were patents obtained from the Patent Office in Washington City, D. C., by him as stated in his bill, and were the patents and in said bill. That he then and now believed and believes himself to have been the original inventor of the improvements mentioned in said patents, and each of them, and that the specifications or descriptions annexed to said patents, and each of them, is in the opinion of your orator, who has long been engaged in the occu-
54 pation or business of plough making, sufficiently clear and full to enable any one acquainted with the art to which said improvements appertain, or to which it is most nearly allied, to make, construct and use the same, and that the plough delivered to him by J. T. Rouse, as one made or sold by the defendent, P. H. Starke, or bought from said P. H. Starke, is a distinct palpable and unmistakeable violation and infringement of the said patents of this complainant in these respects, to wit:

It is an infringement of the patent obtained by him and bearing date the 9th day of December, 1856, in this respect, that the mould board shown as Starke's plough is so constructed that the dividing front or cutting edge of said mould board begins to turn away, and from the line extending from the point of the plough upward with the landside to the beam of the same, the mould board and landside
55 uniting to form a continuous dividing edge from the extreme point of the plough to the beam of the same. Said line or cutting edge in Starke's plough mould board turns away from said line as first described above, and continues on by & in front of the helve or neck or throat to the tail of the mould-board; forming not only an unbroken edge from the point of the plough when ready for use, to the tail of the mould-board, but forms a shoulder in the breast of the plough to turn the trash from rising upward to the beam, to the tail of the mould-board or to the open furrow, or, in other words, the plough shown as Starke's commences to turn over the sod from a point midway between bottom and top, or near thereto, that is to say, from a point corresponding with point A in the drawing annexed to Watt's patent of 1856, and from this point the upper edge of the mould-board
56 inclines towards the turned furrow as in the plough of Watt, continuing to the tail of the mould-board.

This complainant further saith that the said plough called Starke's plough is an infringement of the second patent dated August 2nd, 1859, in this, that the said Starke has extended and widened the throat of his plough from the narrow throat originally of the helve to keep it from chokeing, as is the case of the Watt plough.

This complainant further saith that the said plough called Starke's plough is a plain and clear infringement of his third patent, to which

reference is made in this case, bearing date the 17th day of August, 1869, in this respect, to wit, that the small mould-board for opening furrows, cultivating crops deeply, in the Starke plough is the same in principle and shape, and effects the same in practical operation
57 and use, as that described in the specifications and drawings annexed to the said third patent above mentioned as mould-board number 10½, presenting a wider base or bottom than top, and doing its working in precisely the same manner; is the same in all respects in Mr. Starke's plough as that in the Watt plough above mentioned and patented by the said George Watt.

And this complainant further saith the plough, throat, breast, mould-board & every part thereof shown by him to Wm. S. Sumner who have given affidavits in this case was the plough, &c., delivered to him by the deponent, J. T. Rouse, as one bought by him from said P. H. Starke or obtained at the store or workshop of said P. H. Starke.

GEO. WATT.

Sworn and subscribed before me this 28th day of September, A. D. 1870, by Geo. Watt.

[SEAL.] J. A. LYNHAM,
U. S. Commissioner District of Virginia.

58 And at another day, to wit, at a circuit court of the United States for the district aforesaid, held in the city of Richmond on Saturday, March 18th, 1871, the following demurrer to the complainant's bill was filed:

WATT
vs.
STARKE.

The d'f't says the bill of the pl'tff is not sufficient in law, and he therefore demurs to the said bill & prays that this his demurrer be taken and considered as though the same were more formally pleaded.

And the d'f't doth set forth and assign the following as the grounds of his demurrer:

1. Because the pl'tff has in one suit sought relief for the alleged infringement of their several patents, thus founding his suit on their several and distinct causes of suit, such multifariousness being
59 against the principles governing in such suits.

2. Because the pl'tff has not distinctly set forth the manner in which the alleged infringements were made, or the particular principles of his alleged inventions which have been violated or infringed. The allegation of infringement is vague & general.

MORTON, OULD & CARRINGTON.
Of Counsel for Dft.

Thereupon the following order was made March 18th, 1871:

This day came the defendant and by leave of the court filed his answer and exhibits therewith, to which the plaintiff by counsel replied generally.

60 The answer and exhibits referred to in the foregoing order are in the words and figures following, to wit:

In the U. S. circuit court for the district of Virginia.

WATT *vs.* STARKE. } In equity.

The answer of Patrick Henry Starke to a bill of complaint exhibited against him in the circuit court of the United States for the district of Virginia.

This respondent, without waiving his demurrer to the complainant's bill, for answer thereto, or to so much thereof as it is material for him to answer, says that in the month of May or June, 1850, the complainant George Watt and himself formed a copartnership under the name and style of George Watt & Co., for the manufacture of ploughs and
61 other agricultural implements. Said copartnership continued until the fall of 1858, when it was dissolved by mutual consent. During the existence of this copartnership the said complainant was possessed of only one patent-right in ploughs, not mentioned in complainant's bill, to wit, a patent dated in 1842, and popularly known as the cuff-brace patent, which expired in 1856.

Under the terms of said copartnership the complainant gave to the firm of George Watt & Co. full license and consent to use said cuff-brace patent, for which privilege the said firm was required to pay and did pay a specified bonus.

Soon after the said copartnership was formed, about the months of June or July, 1850, certain forms and patterns in connection with the manufacture of ploughs were made and used by said copartner-
62 ship, said forms and patterns being what was known as "The breast improvement." This "breast-improvement" was patented by said complainant in 1856, upon his affidavit that it was a new invention, not known or used before the date of his application, though in point of fact the forms and patterns were made as early as 1850 by the hired employees of George Watt & Co., and at the expense of the partnership funds.

This "breast improvement" is the patent marked A in complainant's bill, and is the only improvement or invention named therein.

As to this patent A, dated in 1856, and the improvement and invention claimed therein, this respondent avers that the ploughs with the said improvement attached were made by the said partnership in the city of Richmond, and sold to nearly every agriculturist within twenty miles of Richmond, for more than five years previous to the date
63 of said patent. Ploughs with said improvement were in public use and on sale, in the neighborhood of Richmond, for more than five years previous to the date of said patent marked A, and before the application for said patent, without question, hindrance, objection, or claim from any quarter, and especially without question, hindrance, objection, or claim from the said complainant. On the contrary, they were in public use and on sale, as aforesaid, by the complainant's consent and allowance. Ploughs with the said improvement were gotten up by the said copartnership, and freely sold, for five years previous to the date of said patent, or any application therefor, as is abundantly shown by the books of said copartnership, partly in the complainant's handwriting.

Between the date of the patent A, 1856, and the dissolution of
64 the copartnership in 1858, ploughs with the improvement in pat-

ent A attached were sold by the said firm without protest or objection on the part of said complainant, and with his allowance and consent, and without any demand by him for compensation. For the reasons stated, it will be easily *stated it will be easily* seen why he could make no protest or objection, and why he made no demand for compensation. On the dissolution of the copartnership, in 1858, the stock of ploughs on hand consisted almost entirely of ploughs with the improvement of patent A attached. These ploughs, by the terms of the dissolution, were divided equally between the complainant and this respondent, with full liberty to each to dispose of the same.

When this respondent began business on his own account, after said dissolution, to the best of his recollection, he had on his hands several hundred of these ploughs and castings for several hundred more. This was the stock that came to him on the division of partnership
65 effects. Both the ploughs and castings had the improvement of patent A attached.

After this respondent had made up this lot of castings he constructed a plough called the "Southern plough," and having made application in due form for a patent, he obtained one in August, 1860. This respondent continued to use the patent thus obtained by him in 1860, until the year 1869, when he obtained a patent for his present plough, called the "Dixie" plough. Said patents are herewith submitted, marked, respectively, No. 1 and No. 3, which are prayed to be made parts of this answer.

This respondent also avers that for the past twelve years he has been making ploughs within one hundred yards of the establishment of the complainant, and that up to the time of this suit never received any notice or complaint from him of any infringement of any of his patent rights.

66 This respondent further avers that nearly every plough-maker in Virginia has been making and vending ploughs with the improvement described in patent A attached, for the past ten years, without hindrance from the complainant, and by his allowance.

This respondent further avers that the so-called improvement in patent A was not a useful or valuable improvement, and that it did not effect what was claimed for it.

This respondent further avers that the complainant was not the original and first inventor or discoverer of the so-called improvement described in patent A, or of a material and substantial part thereof, claimed as new, but that ploughs with said improvement were made, sold, and used more than ten years before the date of said patent, and had been in public use and on sale with the consent and allow-
67 ance of the complainant.

And this respondent further avers that the said complainant surreptitiously and unjustly obtained the said patent, marked A, for an alleged improvement, which was in fact invented or discovered by another.

This respondent further avers that in the year 1850, the complainant made an application to the Patent Office, in Washington City, for the identical improvement described in patent A. Said application was refused and a patent denied, as will be seen by paper marked No. 2, prayed to be made a part of this answer. By virtue of such rejection the improvement, under the laws of the United States, whatever it may be, becomes abandoned to the public, unless a new application be made and allowed within two years from the former rejection. In this
68 case, there having been no application before 1856, the said im-

provement became in contemplation of law, as it was in fact, abandoned to the public.

As to the patent marked B, in complainant's bill, this respondent avers and declares that he has not made, constructed, or used the improvement therein mentioned at any time or in any way, and he further avers that to the best of his knowledge and belief the complainant himself has either not used said alleged improvement himself, or has abandoned it.

As to patent marked C, in complainant's bill, this respondent avers and declares that as to the matters claimed as new therein and desired to be secured by said patent, he has not made, constructed, or used anything set forth or described in specification or subdivision 1, 2, 3, 4, 5, 6, 7, 8, 9, or 11 at any time. As to specification or subdivision
69 10 the alleged improvement therein claimed is that the mould-board is wider at its base than at its top. In no respect was such an improvement new, even if it can be properly called an invention or improvement. This respondent obtained a patent dated August 20th, 1860, in which this particular improvement was embraced, and from that date continually since, with the exception of the last year, by virtue of his said patent of 1860, he has used in the ploughs made by him, mould-boards wider at their base than at their top, capable of performing the very functions which are claimed by the complainant in this tenth specification or subdivision. Nor is the principle at all new, for most mould-boards in use for the past fifty years have been wider at their base than at their top. But be that as it may, this respond-
70 ent avers and insists that the patent granted to him in 1860 gave to him the right to make and use mould-boards of any width necessary or proper to accomplish the purposes set forth in Patent C.

In particular answer to the interrogatories in complainant's bill, so far as they have not been heretofore answered herein, this respondent says that he believes that the complainant has used patents A and C, but to what extent he does not know; but the ploughs made by said complainant have not, so far as this respondent believes, strictly conformed to said patents.

As to the profits derived by this respondent from the use of the improvement described in patent A, that being the only one used by this respondent, he avers that he does not believe that he derived any profit by reason of its use, as more than ten years ago, perceiving its
71 inutility, he abandoned its use, as did also the complainant about the same time he obtained his patent of 1869. This respondent believes he could have sold as many ploughs and with as much profit, without the said improvement as with it. Farmers generally cared nothing about it.

This respondent never used any of the alleged improvements in either of said patents, in any other thing or article than ploughs, and only in them to the extent and under the circumstances hereinbefore set forth.

This respondent has not now on hand any ploughs with the improvements mentioned and described in said patents A, B, & C, and has not had or kept any on hand for a number of years past.

And this respondent having fully answered, prays to be hence dismissed with his costs.

P. H. STARKE.

72 STATE OF VIRGINIA,
City of Richmond, to wit:

On this 14th day of February, 1871, personally appeared before me,

and I do hereby declare that the following is a full and exact description of the same, reference being had to the accompanying drawings and to the letters of reference marked thereon, so as to enable others skilled in the art to make use of my invention.

Fig. 1 represents the frame *b c*, mould board *a*, point *d*, and side *e*, when fastened together so as to form a complete plough, with the exception of the wood work or stock of the plough.

Fig. 2. A view of the inner side of the side-board *e*.

Fig. 3. A view of the bottom side of the mould board *a*.

Fig. 4. A bottom view of the point *d*; and

Fig. 5. An inside view of the frame *b c*.

The frame of my plough consists of an upright standard *b*, provided with a curved flange or wing *c c*, see fig 5, and with a recess, *r k l m*, in the lower part of its side. The mould-board *a* is made with a zig-
76 zag edge *g i j k*, (fig. 3) and its bottom is provided with two projections or hooks, *F F*.

The curvature of the wing or flange *c c*, of the frame is such as to fit the curvature of the mould-board. The point *d* is made with an edge, *g i j k* (fig. 4) on its upper side, and with an edge *k l m* (fig. 4) on its side.

The side-board *e*, fig. 2, is made with an edge *r k l m*.

There is no projection on the frame *b c*, against which the mould-board and point rest. The mould-board is flush with the side of the standard *b* on the line *k s t*, as seen in Fig. 1, and thus as there is no projection on the standard against which the edge *k s t* of the mould-board rests, the mould-board might be extended beyond the line *k s t*, so as to answer the purposes of various kind of ploughs.

The shape of the mould-board is only limited on the line *g i j k*, but in every other direction it may be shaped at pleasure, making one plough answer the several purposes of sub-soil cultivating, sod, and stubble and fallow-plough of any size and shape.

The mould-board is fastened to the wing *c c* of the frame by passing the hooks *F F* projecting from the bottom surface of the mould-board,
77 through the slots *h h* in the wing so that the overlapping ends of the hooks will come to rest against the bottom surface of the wing, and a bolt is then inserted through the holes *n* in the mould-board and wing.

The side-board *e* is attached to the frame by placing the part of its edge, *k r*, against the edge *k r*, of the recess *r k l m*, in the side of the standard, and passing a bolt through the holes, *p*, in the side-board and standard.

The point, *d*, is then brought up so that its edge, *g i j k*, joins the edge, *g i j k*, of the mould-board and its edge, *k l m*, rests against the edge, *k l m*, of the side-board, all as shown in fig. *I*.

A bolt passing through the holes *o*, in the wing *c*, and point *d*, fastens the latter to the wing.

The four parts of the plough being thus fastened together, and joining on the line, *g i j k m l r*, serve to brace each other and form a plough, which for all practical purposes is as substantial as if made of one piece, while the mould-board, point and side board, may be varied in shape in any direction, except on the line *g i j k m l r*, when they are joined, for the purpose of adapting the plough to the various purposes of a sub-soil, cultivating, sod plough, &c.

It will also be seen that all the wearing parts of the frame of
78 my plough are covered by the mould-board, point and side board,

so that the frame will not be worn at all, and that one frame may answer any length of time.

Having described my invention, what I claim therein as new and desire to secure by letters, is the construction and relative arrangement of the wing, *e c*, and mould-board, *a g i j k*, (fastened together by means of bolt *n*, and hooks *f f*, and slots *h h*,) the plough standard *e t s r*, the point *d g i j k l m*, and the land side, *e t l m*, all as shown and described.

P. H. STARKE.

Witnesses:
GEO. I. HERRING.
W. H. GARDENER.

79 CONFEDERATE STATES PATENT OFFICE, RICHMOND, VIRGINIA.

I hereby certify that the foregoing patent, No. 29,726, was filed in this office on the 28th day of September, A. D. 1861, and that the same has been duly recorded in liber A, record of letters patent U. S., page 194.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed this thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-one.

[SEAL.] RUFUS R. RHODES,
Commissioner of Patents.

80 EXHIBIT NO. 2.

The U. S. Patent Office.—To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the specification in the matter of the rejected application of George Watt, jr., filed March 21st, 1850, for "mould-board and breast to ploughs."

In testimony whereof I, Samuel A. Duncan, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fourteenth day of October, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fifth.

[SEAL.] SAMUEL A. DUNCAN.
Acting Commissioner.

81 *Specification.*

To all whom it may concern:

Be it known that I, George Watt, jr., of the city of Richmond and State of Virginia, have invented or produced a newly-formed mould-board and breast to ploughs, and I do hereby declare that the following is a full and exact description of the same:

Fig. 1 represents a side elevation of the mould-board or turning plough. Letter A, near the point of the shear, represents beginning of the upper edge of the mould-board, where the earth begins to be raised by it and turned to the right or left, as the mould-board may be placed; said edge, which divides the slices of earth from each other, and on which vegetation and obstructions lap, and is caused by the foreward movement of the plough up to the beam of the same, is lost or

82 done away with in my improvement; and instead of said edge continuing from the point in a curved form up to the beam (com-

mencing at A and terminating at D, just where the beam and standard unites), as is the case in the common plough, commences at A, passes on by the curvature at B, and only terminates at the tail of the mould-board at C, thus presenting a crescent-formed mould board, which, at the curvature at B, said edge is thrown so far from the helve or standard that, by the addition of the helve or standard being bent in towards the mould-board just where the mould-board leaves said helve in the breast of the plough at B (said breast being rounded off instead of presenting an edge as is common in ploughs), the earth as well as obstructions is made to pass by, and not lap on the edge at B, clogging the plough, increasing the draught, and doing bad work. In other words, I dispense with the edge, which continues from the point to the
83 beam of the plough, in the front or breast of the same, and in its stead direct it on by the helve or standard at B, leaving a considerable shoulder or offset sufficiently far enough off to permit everything to pass by, and not clog against the helve or standard at or between B and D, or at the beam.

What I claim is this, the doing away or dispensing with the edge or ridge (sharp or rounded as the case may be) commencing at the point A of the plough and continuing on up to the beam at D, and in its stead the continuation of the unbroken edge or ridge commencing at the point of the plough at A, passing on by the curvature at B, with a shoulder or offset just at B, between the said edge or ridge and the standard or helve of the plough, and terminating at the tail of the mould-
84 board at C, thus presenting, as it were, an unbroken formed mould-board connected to the side of the standard instead of uniting with it at the breast, equally forming its breast; said invention being different in these particulars from all others.

G. WATT, JR.

Teste:
HUGH A. WATT.
T. E. HATCHER.
Ex'd.—L. H. E.

85 EXHIBIT No. 3.

No. 85342.

The United States of America to all to whom these letters-patent shall come:

Whereas P. H. Starke, of Richmond, Virginia, has alleged that he has invented a new and useful improvement in plows, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used, has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant to the said P. H. Starke, his executors, administrators, or assigns, for the term of seventeen years from the twenty-ninth day of December, one thousand eight hundred and sixty-eight, the full and exclusive right and liberty of making, using,
86 and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the patent office to be hereunto affixed. Given under my hand at the city of Washington, on this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

[SEAL.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the patent office.

ELISHA FOOTE,
Commissioner of Patents.

(Here follows diagram marked page 87.)

87 UNITED STATES PATENT OFFICE.

P. H Starke, of Richmond, Virginia. Letters patent No. 85,342, dated December 29, 1868. Improvement in Plows.

The schedule referred to in these letters patent and making part of same.

Be it known, that I, P. H. Starke of the city of Richmond, State of Virginia, have invented a new and useful improvement in plows; and I do hereby declare that the following is a full and exact description of the same, reference being had to the accompanying drawings, and to the figures of reference marked thereon.

To enable others skilled in the art to make and use my invention, I proceed to describe its construction and operation.

My invention is confined to the standard or frame piece of the plow, and the stocking or wooding attached thereto.

All other plows are made of wooden beams running back to and fastening to the handles, or of iron running from the clevis over the mould-board to the base of the plow in the rear; and whenever it is desired to make a high plow under the beam, it must be made very crooked—if of wood so crooked as to destroy its strength, and run too upon the handles so as to destroy the symmetry and proportion of the plow, and if of iron, to require so much metal as to make it both too heavy
88 and too expensive. I make the standard piece of iron, inclining back from the point at which it leaves the mould-board, and then upward as high as is desired, then extending in a line towards the clevis just far enough to form a fastening for a wooden beam to bolt to, say about ten inches, and the balance of the beam is a straight piece of wood, the beam having no connection with the handles, extending no further back than the point at which it fastens to the standard, thus enabling me to make a plow of any height with a straight wooden beam.

Figure 1 is a perspective view of the plow complete.

Figure 2 is the standard piece, of iron.

Figure 3 is the wooden beam.

All the other parts of the plow are like others in common use, and the invention is so easily understood that I deem it unnecessary to describe it more minutely. Having described may invention—

What I claim is, a plow-standard constructed and arranged so as to receive a straight wooden beam and handles, with suitable mould-board and landside, as shown and described.

P. H. STARKE.

Witnesses:
W. A. ELLIOTT.
P. B. BARNES.

89 And at another day, to wit, at a court held as aforesaid, on Wednesday the 10th day of May, 1871, an order was entered as follows:

GEORGE WATT
vs.
P. H. STARKE. } In equity.

On the motion of the plaintiff and for reasons appearing to the court, it is ordered that the defendant appear here on Saturday next, and show cause, if any he can, why the injunction prayed for in the bill filed in this cause should not be awarded; provided a copy of this order be served on said defendant or his counsel on or before Friday next at twelve o'clock.

HUGH L. BOND.

WEDNESDAY, *May* 10, 1871.

And at another day, to wit, at a court held as aforesaid, on Saturday the 13th day of May, 1871, it was ordered as follows:

90 GEORGE WATT
vs.
P. H. STARKE. } In equity.

Ordered that the motion heretofore made in this cause, to show cause why an injunction should not be awarded herein, be continued until Tuesday next.

And at another day, to wit, at a court held as aforesaid, on Thursday the 4th day of April, 1872, the following order was entered:

GEORGE WATT
against
P. H. STARKE. } In equity.

On a motion of the plaintiff for an injunction in this cause the motion for the injunction is overruled.

The following notice was filed in the clerk's office on the 11th day of September, 1872:

91 RICHMOND, *Sep.* 10*th*, 1872.

To GEORGE WATT, Esqr.:

Take notice that on the trial of the infringement suit of George Watt vs. Patrick H. Stark, now depending in the U. S. circuit court for the eastern district of Virginia, for the purpose of proving previous invention, use, and knowledge of the alleged improvements purported to have been patented by the said George Watt, and claimed by him to have been infringed by the said Patrick H. Starke, I will offer the following witnesses, residing in Richmond, Va., F. P. Braman, I. I. McCue, I. W. Cardwell, H. M. Smith, W. H. Turpin, and H. A. Watt, also James M. Carter and John Wickham, residing in Henrico, also H. B. Tomlin and Josiah Burruss, residing in King William, also John Selden and Robert Douthat, residing in Charles City, also Edward Shelton, of
92 Hanover County, also John Haw, of Hanover County, also R. A. Willis and Frank G. Ruffin, of Chesterfield County, the said city

and counties being the places where the said alleged improvements were used prior to the dates of the said patents; also the books and papers of the firm of George Watt & Co., from 1850 to 1858, the articles of co-partnership and dissolution of the said firm.

P. H. STARKE,
By his counsel, OULD & CARRINGTON.

The following notice with the return thereon was filed in the clerk's office on the 3rd day of March, 1873:

In the circuit court of the United States for the eastern district of Virginia. In equity.

GEORGE WATT }
vs.
P. H. STARKE. }

To GEORGE WATT, Esqr.:

93 Take notice that on the trial of the above suit for infringement of certain patents therein named, I will introduce the following witnesses, to wit: F. P. Brannan, I. I. McCue, I. W. Caldwell, H. M. Smith, W. H. Turpin, and H. A. Watt, residing in Richmond, Va.; also James M. Carter and John Wickham, residing in Henrico County, Va.; also H. B. Tomlin and Josiah Burruss, residing in King William County, Va.; also John Shelden and Robert Douthatt, residing in Charles City County; also Edwin Shelton and John Haw, residing in Hanover County; also R. A. Willis and Frank G. Ruffin, residing in Chesterfield County, for the purpose of proving that they had prior knowledge of the improvements named in said patents, and that they had used the same for more than two years before your application for the said patents respectively in their respective localities aforesaid, and will introduce the said witnesses for the purpose

94 of proving further that the said improvements in said patents respectively, and especially in Patent A, had been in public use and on sale in the United States for more than two years before your applications for said patents respectively, and especially before your application for Patent A, and that said improvements, and the improvements especially in Patent A had been abandoned to the public.

Take notice, also, that I shall offer in evidence, for the purpose of proving the previous invention of the improvements mentioned in Patent A, the following patents previously granted by the United States to the patentees herein named, to wit: Patent No. 4263, to John Ball of Greentown, Ohio, dated November 8th, 1845; patent No. 6611, to J. Rich, of New York, dated July 31st, 1849, and patent No. 5529, to Samuel Hall, of Pittsburg, Pennsylvania, dated April 25th, 1848.

95 Take notice, also, that I will offer the aforesaid witnesses and others to prove that you were not the original and first inventor or discoverer of the improvements mentioned in Patent A or in Patent C, or of any material or substantial part of the same.

Take notice also that in the trial of the above suit and of the issue ordered to be tried in the said cause, I will rely upon the following defence along with others, to wit, that the said patent A, mentioned in the bill of complaint and for the alleged infringement of which and other patents the above suit was brought, was subsequently to its date and before the institution of this suit, to wit, on the day of , surrendered by you and was cancelled by the proper authorities of the

United States and a new patent re-issued to you on an amended specification for the improvement mentioned in patent A, on the 10th
96 day of November, 1857, so that the patent A, at the time of the institution of this suit and for a long time previous, was not a valid and subsisting patent.

P. H. STARKE.

RICHMOND, VA., *Mch 7th*, 1873.

Executed by delivering a copy of the within to John Howard, att'y for Geo. Watt.

DAVID B. PARKER,
U. S. Marshall.

And at another day, to wit, on the 18th day of September, 1875, the following notice was filed in the clerk's office:

In the United States circuit court for the district of Virginia.

WATT
vs.
STARKE.

TO GEORGE WATT, Esq'r.:

97 Take notice that on the trial of the said cause of Watt vs. Starke for the infringement of certain patents in the bill filed by you in said cause mentioned, for the purpose of proving that the alleged improvement claimed in the 7th specification or subdivision in reissued patent marked C, dated the 17th August, 1869, had been in public use and on sale in the United States for more than two years before said Watt's application for said reissued patent and for more than two years before his application for the original patent, dated Nov. 26th, 1867, upon which said reissue was based, I shall offer evidence that R. B. Winston, now of the county of Goochland, Virginia, made, sold and used said improvement, or the substantial part thereof, in the counties of Hanover and Goochland, for more than two years before said Watt's application for said original or reissued patent, and that Burns
98 & Schuff, and John Burns and Wilson & Smithers, the said parties being now deceased, did make and sell said improvement or the substantial part thereof at Dover Mills, in Goochland County, aforesaid, for more than two years before said Watt's application for said original or reissued patent.

Also take notice that for the purpose of showing that said improvement or the substantial part thereof had been patented prior to said Watt's supposed invention or discovery thereof, I shall offer in evidence the following patents, to wit, a patent to J. C. Moltrup, dated May 10th, 1859, and granted at the same time; a patent to Loring Wolff, dated Jan. 15th, 1861, and granted at the same time; a patent to H. H. Baker, dated Sep. 14th, 1846, and granted at the same time; a patent to R. B. Winston, dated Dec. 1st, 1857, & granted at the same time; a patent to John Rich, dated and granted at the same time.

Also take notice that I shall offer evidence to prove that the
99 aforesaid improvement or the substantial part thereof, had been described in printed publications, to wit, the publications of the U. S. Patent Office and in newspapers published in the city of Richmond, Virginia, prior to said Watt's supposed invention or discovery thereof.

P. H. STARKE.

And at another day, to wit, at a court held as aforesaid on Monday, the 11th day of October, 1875, an order was entered, which is as follows:

GEORGE WATT *vs.* P. H. STARKE. } In equity.

This cause coming on this day again to be heard, thereupon came the defendant by his attorney, and by leave of the court filed his amended and supplemental answer to the bill of the complainant herein, which answer is as follows, to wit:

100 *Amended and supplemental answer.*

In the U. S. circuit court for the eastern district of Virginia.

WATT *vs.* STARKE. }

By way of amendment and supplement to the original answer heretofore filed in the above cause, this respondent, P. H. Starke, says that it appears by said answer that he had never made, constructed, or used anything set forth or described in specification or subdivion 1, 2, 3, 4, 5, 6, 7, 8, 9, or 11 of patent marked C in complainant's bills, and numbered 3609, dated August 17th, 1869, at any time; and that as to specification or subdivion 10 of said patent, the alleged improvement therein named being that of a mould-board wider in its base than at its top, it was not new; and that further that this respondent had obtained a patent dated & granted Aug. 20th, 1860, in which said mould-
101 board improvement was embraced, by virtue of which patent he had continuously, until 1870, used in the ploughs made by him mould boards wider at their base than at their top, capable of performing the very functions claimed by said Watt in said tenth specification or subdivision.

Upon a more careful scrutiny of said patent C, it appears there are only ten items or specifications of claim, although there are eleven figures illustrating the various improvements claimed in said patent. To prevent misapprehension this respondent says that it was his purpose, in the said original answer to refer to figure 10 and not to item or specification 10, but on the contrary to item 9 of the complainant's claim.

And in order to prevent any misapprehension or false impression in this behalf, he now says it was his intention then, and now is, to refer to figure 10 and to item or claim or specification 9, that being the
102 figure and that the item of claim which refers to mould boards wider at their base than at their top. And this respondent here repeats and reaffirms what is stated in said original answer in respect to subdivision or specification 10, and applies it to item of claim numbered nine in said patent C, and which is illustrated by figure 10.

This respondent also says that it appears by said patent C that the said complainant claims as new in said patent, the following, appearing as item or specification 7 in said patent, to wit: "The handles G G', both attached to the landside side of the plow, as represented and described for the purposes set forth." While this respondent still avers that he has never at any time used, made, or sold ploughs with handles like

those named in said specification 7, yet as the ploughs made by this respondent, as well as by all others, have handles variously
103 constructed, and as it may be claimed by said Watt that the ploughs made by this respondent do infringe those made by said Watt in the matter of this specification numbered 7, this respondent says that the said Watt is not the original and first inventor or discoverer of the alleged improvement mentioned in said specification 7, or of a material and substantial part thereof, and that ploughs with said alleged improvement thereon had been in public use and on sale in the United States for more than two years before said Watt's application for said patent C, and for more than two years before his application for the original patent dated Nov. 26th, 1867, upon which said patent C as a reissue, was based; and that R. B. Winston, now of the county of Goochland, Virginia, made, sold, and used said alleged improvement, or the substantial part thereof, in the counties of Hanover
104 and Goochland, Virginia, for more than two years before said Watt's application for said original or reissued patent was made; and Burruss & Shuff, John Burns, and Wilson & Smithers, all now deceased, did make and sell said improvement, or the substantial and material part thereof, at Dover Mills, in Goochland County aforesaid, for more than two years before said Watt's application for said original or re issued patent was made.

This respondent further avers that said alleged improvement named in said specification 7 had been patented prior to said Watt's supposed invention or discovery thereof; that a patent for the same, dated and granted on May 10th, 1859, was issued to J. C. Moltrup; that a patent for the same, dated and granted on Jan. 15th, 1861, was issued to Loring Wolff; that a patent for the same, dated and granted on Sep. 14th, 1846, was issued to H. H. Baker; that a patent for the same,
105 dated and granted on Dec. 1st, 1857, was issued to R. B. Winston, and that a patent for the same, dated and granted , was issued to John Rich.

This respondent further says that said improvement named in said specification 7 had been described in printed publications, to wit, in the publications of the United States Patent Office, and in newspapers published in Richmond, Virginia, prior to the said Watt's supposed invention and discovery thereof.

As to specification nine in patent C, to wit, that in relation to the relative width of mould-boards, this respondent says that mould-
106 boards wider at the base than at their top had been in public use and on sale in the United States for more than two years before said Watt's application for said original or reissued patent was made; that W. F. Jenkins, now of Richmond, Virginia, made, used, and sold such mould boards in King William County, Virginia, at Aylett's warehouse, more than two years before said Watt's application for said original or reissued patent was made; that Thomas Spencer, now deceased, made, used, and sold ploughs with such mould-boards in Richmond, Virginia, more than two years before said Watt's application for said original or reissued patent was made; that William Palmer, now deceased, made, used, and sold ploughs with such mould-boards in Richmond, Virginia, more than two years before said Watt's application for said original or reissued patent.

107 This respondent also avers that said complainant Watt was not the original and first inventor or discoverer of any material or substantial part of said alleged improvement named in said specification numbered nine, but that, on the contrary, *that* others invented said

improvement, and had a knowledge of said alleged improvement prior to that of the complainant, Watt; and in proof thereof this respondent refers to W. F. Jenkins, now of Richmond, Virgina; L. P. Brannan, now of Richmond, Virginia; W. F. Brown, of said Richmond; J. W. Cardwell, of said Richmond; and H. M. Smith, of said Richmond.

And this respondent now, having fully answered, prays that he may be hence dismissed, with his costs.

P. H. STARKE,
By OULD & CARRINGTON.

U. S. OF AMERICA.
E. Dist. of Va., ss:

108 This day personally appeared P. H. Starke, and made oath before me to the truth of the statements made in the foregoing answer.

Given under my hand this 18th day of Sept., 1875.

M. F. PLEASANTS, *Clk.*

The following notice was filed in the clerk's office on the 22nd day of October, 1875:

In the United States circuit court for the eastern district of Virginia.

WATT
vs.
STARKE.

To GEORGE WATT, Esqr.:

Take notice that on the trial of the above cause for the infringement of certain patents in the bill filed by you in said cause mentioned,

109 for the purpose of proving that the alleged improvement claimed in 7th specification in reissued patent marked C, dated 17th August, 1869, had been patented prior to said Watt's supposed invention or discovery thereof, I shall offer in evidence the models of the various patents that are mentioned in my former notice, filed Sep. 18th, 1875.

P. H. STARKE.

The following notice was filed in the clerk's office on the 30th day of March, 1876:

To GEORGE WATT, Esqr.:

Take notice that, for the purpose of proving prior use and discovery of the inventions claimed in your reissue patent of August 16th, 1869, filed in a suit in the circuit court of the United States for the eastern district of Virginia, in which you are plaintiff and I am defend-

110 ant, I shall introduce the patents of J. H. Gooch, dated May 8th, 1860; W. E. Wormell, dated August 28th, 1860; S. J. Olmstead, dated Sept. 13th, 1864; John S. Thomson, dated 26th of June, 1860; John Rich, July 31st, 1849; P. H. Starke, dated 21st day of August, 1860; by the same, dated Aug't 1st, 1871; James C. Maltrop, dated May 10th, 1859; Robert B. Winston, of Richmond, Virginia, dated Dec. 1st, 1857; Abraham Christ, dated Sept. 18th, 1849; P. H. Starke, dated May 5th, 1868; John Ball, Nov. 8th, 1845; and S. Hall, dated April 25th, 1848, on the trial of said suit.

P. H. STARKE.

RICHMOND, *March 29th*, 1876.

And at another day, to wit, at a court held as aforesaid, on Friday, the 7th day of April, 1876, an order was entered, which is in the words following, to wit:

GEORGE WATT
vs.
P. H. STARKE. } In equity.

111 It having been conceded in this case that the defendant has not infringed patent B, mentioned in the complainant's bill, and it being claimed that the defendant, Starke, has infringed only specifications seven and nine of patent C, mentioned in complainant's bills, it is hereby ordered by the court, of its own motion, that the following issues be directed to be tried before a jury at the bar of this court, on the 16th day of May, 1876, to wit:

1. Whether the defendant, Starke, has infringed specification seven of said patent C.

2. Whether the complainant, Watt, was the original and first inventor or discoverer of the improvement claimed in said specification seven, or of a material and substantial part thereof.

112 3. Whether the improvement claimed in said specification seven had been in public use or on sale in the United States for more than two years before the said Watt's application for said patent C.

4. Whether the said improvement claimed in said specification seven had been patented or described in some printed publication prior to said George Watt's alleged invention or discovery thereof.

5. Whether the complainant, Watt, was the original and first inventor or discoverer of the improvement claimed in said specification nine, or of any material and substantial part thereof.

6. Whether the improvement claimed in said specification nine had been in public use or on sale in the United States for more than two years before the said Watt's application for said patent C.

113 7. Whether said improvement claimed in said specification nine of patent C had been patented, or described in some printed publication prior to said Watt's supposed invention or discovery thereof.

HUGH L. BOND.

APRIL 7TH, 1876.

And at the same day, to wit, on the 7th day of April, 1876, the following notice was filed in the clerk's office:

In the United States circuit court for the eastern district of Virginia.

WATT
vs.
STARKE.

To GEORGE WATT, Esqr.:

Take notice that on the trial of said cause of Watt vs. Starke, for the infringement of certain patents in the bill filed by you in said cause mentioned, for the purpose of showing that the im-

114 provement claimed in specification nine of patent C, mentioned in said bill, or the material and substantial part thereof, had been patented or described in some printed publication prior to

your supposed invention or discovery thereof, I shall offer in evidence for said purposes the patent of J. H. Gooch, dated May 8th, 1860; the patent of W. E. Wormell, dated 28th August, 1860; the patent of S. J. Olmstead, dated Sep'r 13th, 1864; the patent of John S. Thomson, dated June 26th, 1860; the patent of P. H. Starke, dated 21st August, 1860; the patent of James C. Moltrop, dated May 10th, 1859; the patent of Abraham Christ, dated Sep'r 18th, 1849; the patent of John Ball, dated Nov. 8th, 1845; the patent of S. Hall, dated April 25th, 1848.

P. H. STARKE.

APRIL 7TH, 1876.

115 And at another day, to wit, at a court held as aforesaid on Tuesday, the 17th day of October, 1876, an order was entered which is as follows, to wit:

GEORGE WATT
vs. } In equity.
P. H. STARKE.

This day came the parties by their attorneys and thereupon came a jury, viz: John F. Regnault, B. W. Gillis, I. I. Foster, C. Burton, George Tyler, R. A. Trice, Franklin Davis, G. K. Gilmer, Emmet Crump, C. T. Russel, Moses Ellyson, and Thos. L. Hundley, who having been duly selected and sworn to try the issues joined, the case was adjourned until to-morrow morning at 10 o'clock.

And at another day, to wit, at a court held as aforesaid on Wednesday, the 18th day of October, 1876, an order was entered in the
116 following words, to wit:

GEORGE WATT
vs. } In equity.
P. H. STARKE.

This day came again the parties by their attorneys, and the jury sworn on yesterday to try the issues herein having partly heard the evidence, were adjourned again till to-morrow morning at 10 o'clock.

And at another day, to wit, at a court held as aforesaid on Thursday, the 19th day of October, 1876, an order was entered in the following words, to wit:

GEORGE WATT
vs. } In equity.
P. H. STARKE.

This day came again as well the parties by their attorneys as the jury heretofore sworn herein, who having further heard the evidence, were adjourned until to-morrow morning at 10 o'clock.

117 And at another day, to wit, at a court held as aforesaid, on Friday, the 20th of October, 1876, an order was entered in the following words, to wit:

GEORGE WATT
v. } In equity.
P. H. STARKE.

This day came again as well the parties by their attorneys as the jury heretofore sworn herein, who, having further heard the evidence, were adjourned until to morrow at 10 o'clock.

And at another day, to wit, at a court held as aforesaid, on Saturday, the 21st of October, 1876, an order was entered in the following words, to wit:

GEORGE WATT
v. } In equity.
P. H. STARKE.

118 The further hearing of this case was this day adjourned by order of the court until Tuesday morning next, October 24th, 1876.

And at another day, to wit, at a court held as aforesaid, on Tuesday, the 24th of October, 1876, an order was entered in the following words, to wit:

GEORGE WATT
v. } In equity.
P. H. STARKE.

This day came again as well the parties by their attorneys as the jury heretofore sworn in this case, who, having further heard the evidence, were adjourned until to-morrow morning at 10 o'clock.

And at another day, to wit, at a court held as aforesaid, on Wednesday the 25th of October, 1876, an order was entered in the following words, to wit:

GEORGE WATT
v. } In equity.
P. H. STARKE.

119 This day came as well the parties by their attorneys as the jury heretofore sworn in this cause, who having heard the evidence in full, were adjourned until to-morrow morning at 10 o'clock.

And at another day, to wit, at a court held as aforesaid, on Thursday October the 26th, 1876, an order was entered in the following words, to wit:

GEORGE WATT
v. } In equity.
P. H. STARKE.

This day came again as well the parties by their attorneys as the jury heretofore sworn in this cause, who having heard the arguments of the counsel in full, retired to their room to consult of a verdict to be rendered herein.

And at another day, to wit, at a court held as aforesaid on Friday the 27th of October, an order was entered in the following
120 words, to wit:

GEORGE WATT
v. } In equity.
P. H. STARKE.

This day came again the parties by their attorneys, and the jury sworn to try the issues in this cause appeared in court in accordance with their adjournment, and having fully heard the evidence and the arguments of counsel, upon their oaths returned a verdict in the words and figures following, to wit:

"Upon the first issue joined the jury find for the defendant. Upon the second issue joined the jury find for the defendant. Upon the third issue joined the jury find for the defendant."

Whereupon the plaintiff moved the court to set aside said verdict and grant him a new trial, which motion the court overruled.

121 MEMORANDUM.—Upon the trial of the issues in this cause the plaintiff excepted to two opinions of the court given upon the trial of said issues, and tendered his bills of exceptions to said opinions in pursuance of leave given at the time of said rulings, which were received by the court, signed and sealed and ordered to be made a part of the record on the said trial.

The bills of exception referred to in the foregoing order are in the words and figures following, to wit:

Be it remembered that upon the calling of this cause the plaintiff Watt tendered and filed a certified copy of a disclaimer to so much in his patent as is claimed in claim No. seven of said patent, dated day of , 1869, filed in the cause, which said disclaimer is in the words and figures following, to wit:

121¼ DEPARTMENT OF THE INTERIOR,
U. S. Patent Office.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from files of this office.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this seventeenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

W. H. DOOLITTLE,
Acting Commissioner.

121½ To the Commissioner of Patents:

The petition of George Watt, of the city of Richmond, in the county of Henrico, and State of Virginia, respectfully represents:

That your petitioner on the 26th day of November, 1867, obtained from the United States letters patent for an improvement in plows, which were afterwards surrendered, and a reissue was granted to him of said letters patent on the 17th day of August, 1869.

That he has reason to believe that through inadvertence or mistake,

the specification and claim of said reissued patent are too broad, including that of which your petitioner was not the first inventor.

Your petitioner, therefore, hereby enters his disclaimer to that part of the claim in said specification which is in the following words: "The handles G G, both attached to the landside side of the plow, as represented and discribed for the purposes set forth"; being item numbered seven (No. 7) in said claim.

GEO. WATT.

Witness:
JOHN A. MEREDITH.
JOHN HOWARD.

122 And thereupon the issues touching said claim being waived the jury were sworn upon the remaining issues, which related to claim numbered nine in said patent, ordered by the decree on the 7th April, 1875.

And after the jury were sworn as aforesaid, the said plaintiff to *waive* the issues on his part offered in evidence his said patent, and then rested his case.

And the counsel for the defendant Starke to maintain the issue on his part introduced as a witness the said defendant, and after interrogating him offered in evidence certain patents and proposed to examine the said defendant in relation to said patents, but the plaintiff objected to the introduction of said patents as evidence before the jury upon the ground that no notice of the purpose to introduce said patents had been given to or served on either the plaintiff or his attorney; and

123 the defendant insisted that notices of the purpose to introduce said patents had been filed with the clerk of the court and the date of said filing endorsed on said notices by said clerk, and further that he had the right to introduce the patents to show the state of the art in respect to improvements in the manufacture of plows at and before the date of the plaintiff's invention, even if the defendant had not given the notice mentioned in the statute.

But the counsel for the plaintiff contended that no entry on the order book of the court of the filing of said notices had been made, and called for the production of such order and none was produced or shown.

But the court overruled said objection and allowed the said patents to be offered in evidence to the jury; the said patents so introduced as evidence are the following, to wit: The patent of Jas. C. Moltrop, dated the 10 of May, 1859; the patent of Olmstead, dated the

124 day of , 1864; the patent of Gooch, dated the day of , 1869; the patent of J. T. Thompson, dated the 26th day of June, 1860; the patent of W. E. Wannell, dated the 28 day of August, 1860; the patent of R. B. Winston, dated the 1st day of Dec'r, 1857; the patent of John Rich, dated the 31 day of July, 1849.

To which opinion of the court overruling the objection to the introduction of said patents the plaintiff excepted and tendered this his bill of exceptions, and prayed that the same might be signed, sealed, and reserved to him, which is done accordingly.

[SEAL.] HUGH L. BOND.

Be it remembered that upon the trial of the issues ordered in this cause the plaintiff, Watt, offered in evidence his patent dated the day of , 1869, and then rested his case, and then the defend-

125 ant, Starke, introduced proof tending to show that plows and mould boards substantially the same in principle and mode of

operation with the plow and mould board of the plaintiff had been in common use more than two years before the date of the application of the plaintiff for his original patent; and also introduced sundry patents, being same patents mentioned in first bill of exceptions, tending to show that plows and mould boards had been patented previous to the alleged improvement of the plaintiff, which were substantially the same in principle and mode of operation with the plow and mould boards of the plaintiff, and then the plaintiff offered rebutting testimony, and thereupon the evidence being closed on both sides the plaintiff then offered the following instructions, three in number, which were granted, to wit:

1. That George Watt is the inventor of the improvements claimed
126 in his patents issued in 1867 and 1869, unless the improvements testified to by the witnesses, or those claimed in the patents offered in evidence by the defendant, do substantially the same work in substantially the same way by substantially the same means.

2. Although improvements in the mould board of the plow were made by a change in its form before the patents of 1867 and 1869 were issued to said Watt, yet he is the inventor of the improvements claimed in said patents, if he has improved the mould board by the use of a substantially different form of mould board, which does its work in a substantially different way.

3. That the letters patent offered by the plaintiff, George Watt, is prima facie evidence that he is the inventor of the improvements patented therein, and the jury must so find, unless the defendant
127 shall offer evidence to satisfy them that he is not the inventor.

The defendant then offered the following instructions, which were granted, to wit:

1. If the jury find from the evidence that the invention claimed by the plaintiff under his patent of Aug., 1869, was not substantially different from any machine or thing in use, but that the plaintiff's invention was merely a formal alteration of existing machines, then the plaintiff's patent is void, although the formal alteration made by him was a slight improvement on existing machines. (Stanley vs. Whipple, 2 McLean, 35; Smith vs. Pearce, 2 McLean, 176.)

2. If the jury find from the evidence that the end to be accomplished by any of the patents dated prior to Sep'r, 1867, offered in evidence by the defendant, is the same as that sought to be accomplished by
128 the reissued patent of Aug., 1869, and that the substantial means to accomplish the end are the same, the latter patent is void, though it may accomplish such end more effectually than the other patented plows. (Imlay vs. Norwich, 4 Blatch., 227.)

3. If the jury find from the evidence that any of the patents given in evidence bearing date before 1867, essentially performed what is claimed for the plaintiff's patent, and that the structure and action of any of them would suggest to the mind of an ordinarily skillful mechanic its adaptation to the same use as the plaintiff's patent without material change, then the plaintiff's patent is not a new invention, and the jury must find for the defendant. (Tucker vs. Spalding, 13 Wall., 453.)

4. If the jury find from the evidence that the invention claimed by the plaintiff under his reissued patent of 1869, was substantially the
129 same in principle and mode of operation with any other invention in use before the date of his application, they must find for the defendant, even though they may find that the plaintiff's invention was a more extended application of the principle of such former invention involving change only of forms, proportions or degree, and that the plaintiff's invention accomplishes better results through substantially

the same means. (Smith vs. Nichols, 21 Wallace, 112; Roberts vs. Ryer, 22 do. 150.)

To the giving of which said instructions offered by the defendant, the plaintiff objected, but the court overruled the objection; to which opinion of the court overruling said objection and giving said instructions, the plaintiff excepted and tendered this his bill of exceptions, and prayed that the same may be signed, sealed and reserved to him, which is done accordingly.

Oct. 28, '76.

[SEAL.] HUGH L. BOND.

130 And now at this day, to wit, at a court held as aforesaid on Saturday the 28th day of October, 1876, this cause coming on to be heard upon the papers formerly read, upon the original and amended and supplemental bills of the complainant, the original and amended and supplemental answers of the defendant, the replications to said ansewers, the notices filed, depositions, disclaimer of the complainant and the verdicts of the juries rendered at the bar of the court was agreed to by counsel. Whereupon it is ordered, adjudged and decreed that the original and amended supplemental bills of the complainant be dismissed, and that the complainant pay unto the defendant his costs.

And after the foregoing decree was ordered the plaintiff moved the court to allow him an appeal, which motion the court granted and allowed him an appeal.

Octo 28, 1876.

HUGH L. BOND.

131 Circuit court of the United States of America, district of Virginia.

GEORGE WATT }
vs.
P. H. STARKE. }

Know all men by these presents that we, George Watt and Manfred Call, are held and firmly bound unto P. H. Starke, in the sum of one thousand dollars, to be paid to the said P. H. Starke, heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this 28th day of October, A. D. 1876.

Whereas the above-named George Watt hath prosecuted an appeal to the Supreme Court of the United States to reverse the judgment or decree rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Virginia.

Now therefore, the condition of this obligation is such, that if the above-named George Watt, shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GEO. WATT. [SEAL.]
MANFRED CALL. [SEAL.]

Sealed and delivered in presence of—
M. F. PLEASANTS, *Clerk.*

Approved.

HUGH L. BOND.

132 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, do hereby certify the foregoing to be a true transcript of the record and proceedings of the cause therein named.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Richmond in said district this day of January, 1877.

[SEAL.]

Clerk.

(Indorsement on cover:) No. 337. George Watt, appellant, vs. P. H. Starke. E. Virginia C. C. U. S. Filed 23rd February, 1877.

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IN THE

Circuit Court of the United States.

FOR THE EASTERN DISTRICT OF VIRGINIA.

RICHMOND, MARCH 7TH, 1876.

No. 145. GEORGE WATT vs. P. H. STARKE. IN EQUITY.

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RICHMOND, MARCH 7TH, 1876.

No. 145. GEORGE WATT vs. P. H. STARKE. IN EQUITY.

On motion of the plaintiff, by John Howard, counsel, it is ordered that Matthew F. Pleasants be and he is hereby appointed an examiner in this cause with authority and power to examine on oath such witnesses as may be brought before him, and report their depositions to the court.

RO. W. HUGHES, Judge.

Notice to take depositions.

To P. H. Starke:

You will please take notice that I shall proceed on the 21st day of March, A. D. 1876, between the hours of 10 o'clock A. M. and 6 o'clock P. M., to take the depositions of W. S. Sumner and others to be read in evidence on the trial of a suit now pending in the circuit court of the United States for the eastern district of Virginia, in which I am the plaintiff, and you are the defendant; and if from any cause the taking of said depositions shall not be commenced, or being commenced shall not be completed on that day, the same will be continued from day to day, or from time to time until completed.

GEORGE WATT,
by Counsel.

In the circuit court of the United States for the eastern district of Virginia:

Examiner's Office, Richmond, March 21, 1876.

George Watt,
vs.
P. H. Starke. } In equity.

Present—John Howard and G. P. Haw, counsel for plaintiff; Ro. Ould, counsel for defendant.

Depositions of witnesses taken before me in pursuance of a notice hereto annexed, to be read as evidence on the hearing of the above entitled cause.

Objection is made by the defendant by counsel to the taking of these depositions as follows:

1st. Because no notice has been given by the complainant to the defendant that he desired the evidence to be adduced in the cause to be taken orally, but simply a notice to the defendant that the complainant would proceed on this day to take the depositions of W. S. Sumner and others, to be read in evidence on the trial of this suit.

2d. Because notice of the time and place of the examination of witnesses has not been fixed by the order of the examiner.

3d. Because the names of the witnesses to be examined are not given.

4th. Because no general replication was filed to the supplemental and amended answer on or before the next succeeding rule day after such answer was filed; nor has any such replication been filed to this day, and therefore the cause is not at issue.

To which objections the plaintiff, by counsel, replied that as to the said 1st objection, the very character of the notice itself showed that the testimony was first to be heard orally, and then taken down by the examiner in writing—as the notice was that the depositions of witnesses would be taken, and that is the only known way of taking depositions—and it was not necessary to use the word "orally" in the notice.

As to the 2d objection, in point of fact, the examiner authorized the counsel for the plaintiff to fix upon any day prior to the first Monday in April, 1876, that would suit his convenience, and it was understood by the counsel that this day (March 21st) would suit the examiner's convenience; and the notice itself shows that it was

served on March 11th, 1876, and that it was given to this the 21st day of March, 1876, which is considered an entirely reasonable time.

As to the 3d objection, it was not necessary to give the names of all the witnesses, there being no known law or rule of court, practice or custom which requires it to be done.

As to the 4th objection, according to the long and well-established practice and understanding in this court as in every other court in Virginia, the clerk of the courts as a matter of course, enters and is expected to enter the formal entry of general replication on the docket or on the papers at the proper rules, unless especially directed to the contrary. Such a thing as a written general replication formally drawn out and filed by counsel being unknown. And if the clerk has not made a formal entry of a general replication in this case, it is submitted that it is perfectly competent for him to do so *nunc pro tunc*. And it is further submitted that there having been entered a general replication to the original answer, and the sole office and object of the amended and supplemental answer being to make a correction of a reference in the original answer, which was a matter of a merely formal character, in respect to which the answer itself and the exhibits in the cause showed what was the correct reference, it would be sticking in the back to say that the parties are not now fully at issue in respect to all the matters involved in this litigation. If, however, the defendant is taken by surprise by any formal defect such as he alleges and is injured thereby, no doubt full justice will be done him by the court.

George Watt being duly sworn, deposes and says in reply to questions by plaintiff's counsel.

(The counsel for respondent objects to the examination of this witness because he is not named as a witness whose deposition is to be taken, in the notice.)

Before examining the witness, counsel for the plaintiff introduces patent C, which is filed with the bill, which is numbered 3,609.

Question 1. Please state your age, occupation and residence?

Answer. I am in my 61st year, I am a plough manufacturer by occupation, and reside in the city of Richmond, Virginia. I have been in the business of plough manufacturing 36 years.

Question 2. Please state whether or not the defendant has infringed your patent marked C, filed in the cause, and which is here now shown you, and if so state in what respect?

Answer. He has infringed my said patent by making and using

small mould-board, figure 10, specification 9, and marked out by a dotted line on figure 6.

Question 3. Did or not the defendant make mould-boards for sale, and sell them, such as are described and secured to in your said patent?

Answer. He did, and in my judgment it was the main cause for the introduction of his "Dixie" plough.

Question 4. I understand you to say then that the defendant makes and sells a plough called the Dixie plough. Is he a manufacturer of ploughs in this city, and does he or not use your mould-boards in the manufacture of his said Dixie plough?

Answer. He is a manufacturer of ploughs in this city and uses mould-boards in his Dixie plough similar to and of the same principle as the mould-board described in my patent.

Question 5. How long has the defendant been so manufacturing and selling mould-boards similar to and made upon the same principle as your patent?

Answer. I cannot give the date, but I discovered it some time during the year 1868, or it might have been 1869. I have the date I think of my discovery of it, but did not think it important to bring it here to day.

Question 6. What was the date of your original patent of which said patent C is the re-issue?

Answer. Patent C will give the date of both.

Question 7. Can you produce one of your own mould-boards and one of those made and sold by the defendant Starke.

Answer. I can—the mould-board now here produced marked A B No. 1 is mine, The one marked P. H. Starke, in white lead, is the defendant's, purchased on a plough from Starke, which was made and sold by him in 1868 or 1869, when Watt and Knight were partners, Colonel Wm. C. Knight being then my partner—the purchase was made by Mr. Rouse, former stage driver at Tappahannock, for me, in one of the years named.

Question 8. You have stated that in your judgment the use of your said mould-board was the principal cause of the introduction by the defendant of what he calls the Dixie plough. Will you explain that more fully?

Answer. What I mean by that is this—that up to the date when he commenced using my patented small mould-board, the wide and long mould-board was in universal use, and when the value of this narrow mould-board at the top became known, as a cultivating plough it became difficult to sell a plough that had not that mould-board attached to it, for the reason that with the additional narrow mould-board, as an attachment to the plough the plough was virtually, or could be converted into two or more distinct ploughs for various purposes—such as turning the earth, weeding and working small crops, and sub-soiling the earth.

Question 9. Will you produce one of your ploughs and show the application of your own mould-board, and also of the mould-board made by Starke?

Answer. I will.

The further taking of these depositions is here adjourned until to-morrow morning at 11 o'clock.

M. F. PLEASANTS, Examiner.

Examiner's office, Richmond, March 22, 1876.

Present: Geo. P. Haw, counsel for complainant.
Ro. Ould, counsel for respondent.

Examination of George Watt resumed.

Question 10. In your answer to question 8, you have spoken of this small mould-board as being narrow at the top—which description of said mould-board is also given in specification 9 of your patent. Please explain what is called the top of the mould-board?

Answer. The top of the mould-board is that part which is highest from the bottom of the furrow, measuring perpendicularly, at which point the upper edge of the furrow-slice forms a circle in being reversed or turned over, which I would designate at AA on the mould-board here exhibited. I produce now the plough mentioned in question 9, and the above designation AA is made on that plough.

Question 11. What are the advantages derived by a mould-board of the shape of figure 10 in your patent?

Answer. In the breaking up or fallowing of ground not having been broken, it is worthless, but in the cultivation of crops and subsoiling, it allows the larger portion of the earth to fall back in the furrow after being pulverized and disintegrated—throwing only a small portion of the bottom surface of the earth which was raised by the plough over on the surface. It is worthless as a turning or fallowing plough for the reason that it does not subvert the soil owing to its peculiar shape. As a cultivating plough its advantages are that it can be worked very deep, near to small plants, disintegrating the soil, throwing only a very small fraction of earth to the plant, and not covering it as the full mould-board would do, by a large body of earth.

Question 12. Does the mould-board made by the defendant, and which you have exhibited in your deposition, when adjusted to the plough made by the defendant, present the same advantages and accomplish the same purposes as your mould-board?

Answer. It does identically the same.

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Question 12. Does the mould-board made by the defendant, and which you have exhibited in your deposition, when adjusted to the plough made by the defendant, present the same advantages and accomplish the same purposes as your mould-board?

Answer. It does identically the same.

Question 13. Did the plough from which you took this mould-board of the defendant bear the brand of the defendant; and is it similar to the ploughs advertized, manufactured, and sold by him?

Answer. The iron part of it has his name in full in iron letters upon it, and the wood work has branded on it his regular brand in black ink letters. The plough has both the large and the small mould-boards, the large one on it, and the small one here exhibited tied to it, to be used as a turning or cultivating plough—it fits it as well as the large mould-board. They both fit alike. It is one of the different series of numbers which he has—advertises, manufactures and sells, which has been sold extensively all over the country from that date to this.

Question 14. Was this form of mould-board in use, or its advantages known before your discovery of it?

Answer. Never, and the way I discovered it was by getting a plough that I was experimenting with broken in a shape somewhat similar to the small mould-board exhibited here. At the time I made and exhibited at my factory the first one, it was by many of the best farmers laughed at as a crazy idea of my own, so odd was its shape. As soon as those farmers tried it, after my manner of using it, and for the purposes I got it up for, it at once became popular as a cultivating plough, and has continued to increase in popularity ever since. Other manufacturers seeing this, the defendant among others, to sell their ploughs and make them popular, took, without my leave, and adopted it as their own property, the defendant being the first to do so that I heard of, since which many have done the same, to my great injury.

Question 15. During the period in which you have been engaged in the manufacture of ploughs, have you become familiar with the ploughs manufactured and patented in the United States; were you so familiar at the time you obtained this patent?

Answer. During the period of 36 years in wich I have been engaged in the manufacture of ploughs, I have become, by travelling in the North and South, visiting and examining the Patent Office on repeated occasions, and attending fairs in all portions of the United States, during which time I have taken out eight or ten patents on ploughs, thoroughly acquainted with all the ploughs that are made and used in this country, and many brought from foreign countries. At the time I obtained this patent I was thoroughly familiar with the whole of them that were then in use.

Question 16. Is there any other respect in which this patent has been infringed by the defendant than in the manufacture of the mould-board?

Answer. He has infringed the manner of uniting the handles together, shown in figure 3 and described in specification 7 or item 7 of my claim.

Question 17. What were the benefits derived by that mode of uniting the handles?

Answer. This mode of fastening the handles unites the two together at the bottom so that the dirt in falling from the little mould-board does not catch against the right-hand handle to choke and impede it, whereas, in the former mode, the handles were separated, one being fastened to the land-side of the plough, and the other, the right one, being fastened to the mould-board. Handles put together in the former mode could not be worked with the narrow mould-board on the plough. This mode of fastening the handles was indispensable to the use of the small mould-board.

Question 18. Does the defendant still fasten his plough handles in the manner you describe?

Answer. He has changed them from the first that were made by him. Instead of lapping one handle on to the other as I do, and as he did at one time, he now unites both handles so as to unite them together at the bottom. See figure 3 in patent C, for my mode of uniting the handles together at the bottom. My left-hand handle extending below the right so as to admit of bolt b which unites the left handle to the landside of the plough, the right handle lapping on to the left above said bolt. The effect in the use of both modes of fastening the handles being the same when using the small mould-board on the plough.

Question 19. Did the defendant at any time, and if so for how long, use your exact mode of fastening the handles?

Answer. He did for a time. How long I cannot say. He commenced using that mode of fastening the handles as soon as he commenced using the little mould-board, which was after the date of my patent. Up to the date of my patenting my mould-board, I never saw a turning plough made with handles united in the same manner.

Question 20. Does the manner or mode of attaching the mould-board to the plough in any manner involve, affect or control the form of the mould-board?

Answer. Neither the manner or mode of attaching or fastening the mould-board, point or land-side or slide of the plough together have anything to do with the shape or form of the mould-board.

Cross-examined by respondent in person.

1st cross-question. Please state as near as you can the proportion of sales of four-horse three-horse, two-horse, and one-horse ploughs in your establishment?

Answer. I would say, as near as I can come at it, the proportion of my sales is from 20 to 25 times as great in one-horse ploughs as in all the others combined.

Cross-question 2. Do you use the small mould-board No. 9 on any other than one-horse ploughs?

Answer. Very rarely, only when I make a railroad plough or plough for burrowing up common roads. It is rarely used for farm purposes.

Cross-question 3. During your manufacture of ploughs for 30 years past, and prior to the patent of 1867 have you not made yourself and seen those made by others a coulter plough with small mould-board, designed to accomplish and does accomplish the same as this small mould-board?

Answer. I have made many ploughs of all shapes, but never one of the shape of this or that accomplishes the same purpose, nor have I seen one.

Cross-question 4. Did you not as early as 1854 or 1855 make a double winged coulter with small mould-board attached for the purpose of cultivating young corn and small plants in the same manner as this small mould-board does, that is, allowing the earth to tumble in the furrow behind the plough as you describe the working of this small mould-board; and did you not advertise and sell it for such uses?

Answer. I made, sold and used a coulter plough of wrought iron, made of two one inch bars which could be worked with two coulters or one, with the mould-boards welded on to the inch bars, but those mould-boards were wide at the top and narrow at the bottom, and as different from my present plough with my small mould-board on it as is the letter V and the letter A when painted side by side—the sharp point of the letter V being down and the wide being up, whereas the letter A has its sharp point up and its wide point down, and was never intended, nor could ever be made to work in any soil, or by any man in the manner and for the purposes which my plough with the small mould-board does work and is used for.

Cross-question 5. Does not this coulter plough with small mould-board accomplish the same work as your small mould-board? If not, please describe the difference in the work of the two?

Answer. It does not. The coulter plough is made of a bar of iron an inch wide, with a mould-board similar in some respects to the regular turning mould-board, wide at the top and narrow at the bottom, and according to its size is in form and operation, so far as the mould-board is concerned, a turning plough, and is exactly the reverse in its shape to the plough that I claim with the little mould-board on it, and does not effect same results in its operation as my plough does, because of the reversed difference in its shape.

Cross-question 6. Do not farmers continue to buy and work this coulter with small mould-board for working small corn and plants

in preference to the ordinary turn plow, because it pulverizes the earth and does not cover the plant?

Answer. They do not. Where I sold 50 of the coulter ploughs before the introduction of this new invention of mine, I do not now sell one, and it is rarely the case that I sell one to a farmer in any portion of the land. In my trade the new plough has almost entirely superceded it, so that I hardly consider it an article worth keeping. And I will add, so far as its covering up small plants is concerned, the Coulter plough will smother up or cover up twenty times more than my new plough at a reasonable calculation.

Cross-question 7. Are there not sold in this State a large number of what are called double-shovel ploughs, having various sized mould-boards or shovels used for the same purpose as your plough, that is, the working of small plants, which substantially accomplish the same end?

[This question is excepted to by counsel for complainant as irrelevant and referring to a plough of which no notice has been given.]

Answer. There are sold in the State double-shovel ploughs, but to what extent I cannot say. They are used as cultivating ploughs and so are the old-fashioned turning ploughs used as cultivating ploughs, but with the shovels on which are wide at top and narrow at bottom, they can only be used as grass killers, because they throw the dirt and would cover up small vegetables; and with the narrow blade on them, which is about three inches wide (the narrowest I have seen), or if those blades were even one inch and a half wide placed on the shank at right angles, they would throw the earth so abruptly as to cover up any small plant, if worked close to them. The whole construction of them is exactly opposite to my claim.

Cross-question 8. Do not these inch and a half and three inch blades, and this coulter with small mould-boards, when ploughing, allow the larger portion of the earth to fall back in the furrow, as you have described the working of yours?

Answer. Both sizes of those blades, three inch and inch and a half, throw out of their track more earth and farther for their sizes than any turning plough made in the United States, because they are placed square upon the shank on which they are fixed, and throw what dirt they do lift at right angles, instead of an acute angle, as the turning plough does. Some earth naturally falls back in the furrow of course, because the earth thrown on each side is left right on a ridge and nothing to hold it there. Further, the shovel-plough with these coulters acts in the earth precisely in the same manner of the oriental plough made of a stick of wood, which was used before the conception of the angular-shaped plough

now used, formed on the principle of the screw and wedge, or the twisting wedge.

Cross-question 9. Look at the patent paper here presented, marked J. H. Gooch's plough, and examine piece marked A in figure 3, and say whether that is not a mould-board wider at base than at top, and designed to accomplish the same purpose as your small mould-board?

Answer. It is not. It is a third wider at top than at bottom, according to the right mode of measuring mould-boards, and evidently intended and used for an entirely different purpose, and will, according to its size, pull harder than any plough in creation of its size and construction, and is intended from the cut of it, to burrow under and let some of the dirt fall over the mould-board, while a large portion of it is turned over, the shape being positively the reverse in all of its features to my plough.

Cross-question 10. Look at the same drawing and say whether the manner of attaching the handles at the bottom, is not by mitre in the same way as you have described that I put mine together?

Answer. From the drawing, the handles seem to be mitred and run into a loop, and not bolted.

Cross-question 11. Is not the manner in which I fasten my handles more like this drawing than like the manner in which you fasten yours?

Answer. The manner of mitreing at the bottom is similar to yours, but entirely different in their mode of fastening above the lower part. The handles in this patent (Gooch's) lap on each side of the beam, and evidently throw the ploughman to one side of the furrow instead of in the centre.

Cross-question 12. Do you claim in your patent of 1869 (re-issue) any mode of fastening handles other than that of the manner of fastening at the bottom?

Answer. I claim my mode of fastening the handles together at the bottom, as described in patent C, to be used in combination with my small mould-board on the plough, and believe the mode adopted by the defendant is an infringement on my patent, when used on his plough with a small mould-board for the same purpose.

Cross-question 13. Cannot a small mould-board for similar purposes be used on a plough with handles constructed after some other manner than that used by you on your plough? that is, by separating the handles at the bottom?

Answer. If they are *are* separated widely apart so that the right hand handle attaches to a turning mould-board of the same plough, the earth, when the small mould-board is put on, will necessarily drag against the earth on the right or mould-board side of the plough, because of the narrowness of the furrow cut, and cannot practically be used.

Cross-question 14. In applying this small mould-board to two horse and other ploughs such as you have described as railroad ploughs, have you not used handles, that connect differently from the claim in this patent?

Answer. Never when I worked a small mould-board on the plow—because of the impracticability of using the plough with the widely separated handles at the bottom.

Re-examined by counsel for complainant.

1st re-direct. Please explain the difference between the working of the Gooch plow as shown in figure 3 of the Gooch patent, and your plough with the small mould-board?

Answer. In the case of my plough the fine earth is lifted up, and falls back a larger portion of the coarse, cloddy earth falling back under the plough, while a small portion of the fine earth is thrown to the plant—that which was the bottom of the furrow in my plough being the fine earth described—whilst with the Gooch plough, the coarse, cloddy earth falls over and against the plant, acting somewhat similar to what we call a sweep.

2d re-direct. You have described the wing coulter as having two bars of wrought iron upon each of which was welded a small mould-board; please state at what distance apart these two coulters operate, and also state whether or not the intervening space between these two while in operation is thoroughly broken and pulverized?

Answer. They operated at three inches and upwards apart. If not too far apart the intervening space is pulverized and broken up.

And further the deponent saith not.

GEO. WATT.

The hour of adjournment having arrived, the further taking of these depositions is continued until to-morrow morning at 10 o'clock.

M. F. PLEASANTS, Examiner.

Examiner's office, Richmond, March 23, 1876.

Present: Geo. P. Haw, counsel for complainant.
Ro. Ould, counsel for respondent.
P. H. Starke, the respondent, in person.

William S. Sumner, being duly sworn, deposes and says in reply to questions by counsel for complainant:

Question 1. Please state your age, residence and occupation?

Answer. I am 56 years of age, reside in the city of Richmond, and an agricultural implement maker by occupation.

Question 2. Have you been engaged in the manufacture of ploughs; and if so, how long?

Answer. I have, since 1846.

Question 3. State if you have any knowledge of the infringement of the plaintiff's patent marked C in this cause, by the defendant; and if yea, state all you know about it?

Answer. In the latter part of 1867, Mr. Watt made a small mould-board to his single plough, and about the middle of 1869, I visited a farm in Hanover county leased by Allison and Jones, and there I saw a Dixie one-horse plough, with small mould-board like the one made by Mr. Watt, being the first I ever saw. I mean the first mould-board of that character on a Dixie plough. The Dixie plough is made by P. H. Starke.

Question 4. Was the small mould-board manufactured by the plaintiff in 1867, the one that is illustrated in figure 10 of patent C?

Answer. Yes, sir.

Question 5. Did the small mould-board which you saw upon the Dixie plough embrace the same principle embodied in the mould-board of the plaintiff, and did it operate to accomplish the same results, or otherwise?

Answer. The object or the result of the two mould-boards, in my judgment, would be the same.

Question 6. When the small mould-board was adjusted to the Dixie plough, I mean attached to it for the purpose of being operated, would it upon measurement be shown to be wider or narrower at the top than at the bottom?

Answer. Narrower at the top.

Question 7. Is the small mould-board, marked P. H. Starke, introduced in these depositions by the plaintiff, the same pattern as you saw on the Dixie plough in 1869?

Answer. I think it is similar, so far as my recollection is concerned. I could speak more positively if I saw it fixed on the plough.

Question 8. Can you say whether or not the small mould-board, patented by the plaintiff in 1867, upon which there was a re-issue in 1869, was regarded as a useful invention, or improvement in ploughs by the farming community; and whether or not it increased the popularity and sales of the plough?

Answer. I am satisfied that it increased the sale of the plough to a large extent, and was much more popular than before the small mould-board was made or used.

Question 9. State whether or not, to your knowledge, the defendant infringed the plaintiff's patent in the mode of fastening together the plough handles at the lower end.

Answer. I consider it an infringement from the fact that it effects the same objects in view which were patented by Mr. Watt in the Watt plough.

Question 10. Has the defendant at any time since the date of the re-issue of the plaintiff's patent in 1869, fastened his handles in the same manner as shown in plaintiff's patent C?

Answer. I have never seen any handles connected or locked in Mr. Starke's plough the same as in Mr. Watts.

Question 11. Do you remember whether or not on your visit to the farm in Hanover leased by Allison in 1869, your attentian was called to the similarity in the mould-board on the Dixie plough to the mould-board of the plaintiff, by any one then present?

Answer. I do not remember.

Question 12. Was there any one present on that occasion?

Answer. I think not.

Question 13. Who was living on and managing the farm at that time?

Answer. Mr. S. S. Sumner, Jr., my nephew.

Cross-examined for the defendant.

Cross-question 1. You have stated that for a long time you have been engaged in the manufacturing of ploughs. Please state whether in putting the handles to one-horse ploughs of Mr. Watts' make, upon which he uses this small mould-board, do you not first fasten the left-hand handle by one bolt near the bottom end, to the land side of the plough, and then by a bolt 15 or 20 inches above, through the end of the beam, and then fasten the right hand handle to the left hand one by another bolt several inches higher up from the lower end than the bolt that fastens the left hand handle to the land side?

Answer. We do.

Cross-question 2. Have you, since August 1869, seen any plow manufactured by the defendant of the Dixie patent, made with handles put together in the manner you have just described, in Mr. Watts' plow?

Answer. I have not.

Cross-question 3. Did you measure the mould-board you saw on the plow in Hanover at Allison's, so as to determine accurately whether it was wider at the base than at the top?

Answer. I did not measure it, but from my eye judged it was wider at the base than at the top.

Cross-question 4. Did you observe or do you know which number of the Dixie plow this was you saw at Allison's?

Answer. I did not notice the number.

Cross-question 5. You have said that the object in view in the two mould-boards made by the defendant and Mr. Watt was the

same. Please explain what was the object in view by Mr. Watt in using his mould-board?

Answer. His first object in making his small mould-board was for cultivating corn and other plants at an early stage, to prevent covering up the plants when small and to effect a deep tillage. He had other objects in view for the purpose of opening furrows for planting corn, and also for subsoiling.

Cross-question 6. Will not other plows and coulters work young crops deep without covering, and open furrows and subsoil the ground?

Answer. To some extent they will.

Cross-question 7. State the difference in the respects referred to?

Answer. The difference between the Watt plow, with the small mould-board, and the ordinary coulter is, that it is more controllable, from the fact that the bar, or land side, and point bear to the earth, which makes it run more uniform in depth and easier controlled by the plowman, with less labor to man and horse. As to opening furrows for planting corn and subsoiling the ground, the advantage in the Watt plough is that it leaves in the furrow loose earth for dropping the corn upon, instead of hard earth at the bottom of the furrow. The advantage as a subsoiler is that the same plow is used as with the twin mould-board.

Cross-question 8. Will not the shovel plow in common use leave the bottom of the furrow, in opening corn rows, as soft and mellow, and more so, than the Watt plow?

Answer. In my judgment it will not.

Cross-question 9. Does not the shovel plow work without a base but purely by burrowing, and does it not therefore leave a softer bottom and allow the loose earth to tumble in behind it?

Answer. I think not to the extent of the Watt plow, from the fact that it lifts from the point of the plow the earth which is by the construction of the small mould-board which makes the earth more loose and better prepared for the corn than the shovel plow.

Cross-question 10. Does not the Watt plow work a share and point together from four to eight inches wide, which shears off the furrow slice from the ground below without disturbing it—the ground below?

Answer. Yes.

Cross-question 11. Does the shovel plow in common use shear off the furrow slice without disturbing the ground below?

Answer. Yes, sir.

Cross-question 12. Does the shovel plow cut a flat surface from four to eight inches wide at the bottom of the furrow, as does the Watt plough?

Answer. It burrows the earth, but don't cut.

Cross-question 13. Are there not other and better sub-soiling plows than the Watt plow?

Answer. In my judgment there are not.

Cross-question 14. Are there not other sub-soil ploughs manufactured which are claimed by their manufacturers to do better sub-soiling than the Watt plow?

Answer, There are.

Cross-question 15. Please look at the patent papers, marked J. H. Gooch's plow, here presented, and examine the small mould-board, marked A in figure 3, and say whether, in your opinion, this mould-board will not work small corn in as good a manner as that claimed for Mr. Watt's small mould-board—that is, by pulverizing the ground and disintegrating it, and allow a large quantity to fall in the furrow behind it?

Answer. In my judgment, as it appears here, it would not answer as well for the same purpose as Mr. Watt's small mould-board, from the fact that it is much wider and much higher, and the angle too acute, which would necessarily cover up small plants.

Cross-question 16. Will a mould-board with an acute angle cover the crop more than one with an obtuse angle?

Answer. In my judgment, it will.

Cross-question 17. Will not this mould-board of Gooch's, in your opinion, pulverize and disintegrate the soil, and allow a large portion to fall back in the furrow behind?

Answer. In my opinion, it will not, from the fact that the mould-board in rear is too wide, necessarily throwing the earth at right angles.

Cross-question 18. How do you determine the width of the Gooch mould-board behind?

Answer. From the appearance of its width in the drawing, figure 1.

Cross-question 19. In ascertaining the width, do you determine it by a perpendicular line to the surface of the ground, drawn across its face?

Answer. Yes, sir.

Cross-question 20. Compare the shape of the mould-board in Gooch's patent, marked A on figure 3, with the small mould-board on the Watt plow here exhibited, and say which is wider at the rear end when measured by the perpendicular line you have just described.

Answer. In my judgment, from the appearance of the two, the Gooch appears the widest.

Cross-question 21. Is the difference in the width great enough at that point to make any difference in the practical working of the two?

Answer. In my judgment the difference is in the shape and not in the width.

Cross-question 22. Please state how long you have been employed by Mr. Watt and in his establishment?

Answer. Since 1846, with an interval of about two years and a half, 1848, a part of 1849 and the whole year of 1868.

Re-direct examination by counsel for complainant.

Question 1. You have been asked in the 6th question of the cross-examination, if other plows and coulters would not work young crops deep without covering, and open furrows and subsoil the ground. Please state, if prior to the patent obtained by George Watt in 1867 and re issued in 1869, there was any one turning plow that would accomplish all these purposes and thus combine several plows in one?

Answer. None that I have ever seen.

Question 2. You have been asked about the shovel plow. Please state if that plow is ever used or is at all suitable for opening furrows for planting purposes?

Answer. I never have heard of its being used for opening corn rows.

Question 3. Is not this shovel plow simply a diamond-shaped point or a form similar attached to an iron bar, the point of the blade being down, so that its operation is to form a furrow much narrower at the bottom than at the top?

Answer. Those that I have seen are constructed in that way.

Question 4. Please examine the Gooch patent and tell me, supposing a line to be drawn at right angles to the bottom of said plow on its land side, and a measurement made from said line to the furthest point of the mould board at its highest point from the ground, if by this measurement mould board A, in figure 3, is wider or narrower at the point highest from the ground than at the lowest point?

Answer. In my judgment, from the appearance of the drawing, the Gooch plow is wider at the rear end or the highest point from the ground than at its base. The base of the mould board is the narrowest point by that measurement.

Question 5. By this mode of measurement is the Watt patent with the small mould board attached to the plow ready for operation, at all similar to the Gooch patent?

Answer. No sir.

Question 6. In running the Gooch plow as shown in Figure 3, with the mould-board to the corn or other plant, which would be nearest to the plant, the point and cutting part of the plow, or the mould-board or turning part of the plow?

Answer. The point or cutting part of the plow.

Question 7. Are you in the habit of examining drawings of plows, and are you in any manner competent by reason of experience, in examining or making such drawings, to form an accurate opinion of a plow from a drawing shown you?

Answer. I am not competent from the fact that I have never had occasion to examine drawings of any kind, not being in the habit of working by draft or scale, and do not feel competent to judge accurately from a drawing of any kind.

And further deponent sayeth not.

WM. S. SUMNER.

Emmet C. Knight being duly sworn deposes and says in answer to questions by counsel for complainant:

Question 1. State your age, residence, occupation and where you were employed during the years 1869, 1870, 1871 and 1872?

Answer. I am 28 years of age, reside in the city of Richmond, and am a tobacconist by occupation. I was employed during the years mentioned by Watt & Knight as salesman.

Question 2. State if you know anything of the infringement by the defendant of the plaintiff's patent of 1867, which was re-issued in 1869.

Answer. I have never seen or examined closely the patent alluded to, but it is well understood by me that Mr. Starke was making a small mould-board to his plow which Mr. Watt claimed to be a direct infringement upon his patent right.

Question 3. State if you ever saw any plows manufactured by the defendent with a mould-board similar to the one marked figure 10 in patent C, and which involve the same principle and operated to accomplish the same results?

Answer. I must say I have. I have seen them on Mr. Starke's plows when they were in shipping condition, in the railroad depots. On one occasion Mr. Watt had a sample of Mr. Starke's plow in his own store.

Question 4. Did you ever see them at the store of the defendant or elsewhere in his possesion, or under his control?

Answer. I have seen them in that condition with the small mould-boards tied to them, in front of his store prepared for shipment.

Question 5. Was this frequently the case, or otherwise?

Answer. I saw them frequently in passing up and down the street. I judged he was doing a large business.

Question 6. During the time you were with Watt & Knight was this small mould-board, as shown in figure 10 of plaintiff's patent, regarded by farmers as a valuable improvement in plows, and was the demand for them very great?

Answer. Most undoubtedly. The occurrence was rare in which a farmer would desire the plow without that attachment.

Question 7. Do you know whether or not the defendant ever attached, or now attaches, the handles to his plow in the manner

patented and claimed by the plaintiff in his patent C, or in a similar manner?

Answer. To the best of my recollection, when the defendant first made his plow he attached the handles in a manner similar to that used by Mr. Watt, though he did afterwards make a change, which, in my judgment, in no way affected the principle or idea.

Question 8. You say that when he first commenced making his plow he did attach his handles in a manner similar to the plaintiff's mode—can you say to what period or year you allude?

Answer. To the best of my recollection, it was about the spring of the year 1869, but I cannot be positive on that point.

And further this deponent saith not.

EMMETT C. KNIGHT.

Samuel S. Sumner, Jr., being duly sworn, deposes and says in reply to questions by complt.'s counsel:

Question 1. Please state your age, residence and occupation?

Answer. I am 32 years old, reside in Richmond, and am a travelling agent for Watt & Call.

Question 2. Where did you reside in 1869?

Answer. I was residing in Hanover county, managing for Allison & Jones.

Question 3. State if you know anything of the infringement by the defendant of the patent of the plaintiff granted in 1867, and which was reissued in 1869, now shown you?

Answer. Well, while managing for Allison & Jones they sent for use on the farm five one-horse Dixie plows, Number X, with handles similar in principle to the Watt one-horse plow, which we were also using side by side with the Dixe plow. On the Watt plow was an attachment called the weeding mould-board, and the Dixie plows had a similar attachment—similar in shape and principle.

Question 4. Can you state from your experience and observation in travelling as an agent for the Watt plow whether or not the small mould-board, figure 10, is regarded by the farmers as a valuable improvement in plows, and whether or not it adds to the popularity and selling value of the plow?

Answer. I have frequently had farmers to say tome that they would rather have the plow with the small mould-board, if it contained no other, than any plow they have ever seen. Often in calling attention of farmers and merchants to the advantages of the Watt plow in having the different sized moulds for breaking and cultivating their lands, I have heard them say the Dixie has the same attachment, that is, turning and weeding moulds; and it is one of

the great influences in the sale of the Watt plow that it combines this small mould with the turning mould. It is regarded as a valuable improvement and does add to the popularity and selling value of it.

Question 5. At what time in 1869, were these Dixie plows sent to you in Hanover?

Answer. I can't state the exact date, but it was during the planting season in the spring.

And further deponent saith not.

S. S. SUMNER, JR.

The hour of adjournment having arrived, the taking of these depositions is continued till to-morrow morning at 11 o'clock.

M. F. PLEASANTS, Examiner.

Examiner's office, Richmond, March 24, 1876.

Present: Geo. P. Haw, counsel for complainant.
P. H. Starke, respondent in person.

William C. Knight, being duly sworn deposed and says in answer to question by complaintant's counsel:

Question 1. Please state your age, residence and occupation?

Answer. I am 57 years of age, reside in Richmond, and a manufacturer by occupation.

Question 2. State if you have ever been engaged in the manufacture of plows; and if so, when and where?

Answer. I was a partner of Mr. George Watt, of the firm of Watt & Knight, from January, 1868, to October, 1872, and our business was principally the manufacture of the class of plows patented by Mr. Watt.

Question 3. State if you know anything of the infringement by the defendant of the patent granted in 1867 to the plaintiff on which there was a re-issue in 1869, here exhibited marked C; and if yea, state all you know in relation to it.

Answer. The small mould-board, figure 10 in the patent papers, was manufactured by our firm, and in general use on the Watt plow. Subsequently, Mr. Starke adopted and used a mould-board of similar size and shape on his plow known as the Dixie plow. Mr. Watt considering this an infringement of his patent notified Mr. Starke to that effect. My impression is that the notice was a written one, though as to this I cannot be positive now. After this I received a note from Mr. Starke, addressed to me personally, disclaiming any intention of infringing Mr. Watt's patent, and accom-

panying this note was the patent which had been issued to him, Starke, on his plow, issued August 21, 1860, in which among other advantages claimed, was that his plow was adapted to the use of mould-boards of different sizes and shapes. The patent papers sent me by Mr. Starke, after being examined, were returned to him. Sometime after this, Mr. Starke sent around to the house of Watt & Knight a small mould-board of a different shape from that as to which Mr. Watt had complained. The difference in shape consisted in a widening out of the mould-board at the extreme upper left side as seen from the front. That is my present recollection, and accompanying this mould-board was a message to the effect that in future he should use on his plows a small mould-board of the shape of the one sent.

Question 4. When you returned the patent to Mr. Starke, did you communicate to him in any way your views as to his rights under said patent, and whether or not he was in reality infringing the patent of the plaintiff?

Answer. My recollection is not distinct whether I replied to Mr. Starke's note in writing or not, and of course I cannot now remember with sufficient distinctness whether I expressed any opinion to him in reference to his violations of the plaintiff's patent.

Question 5. Was the mould board manufactured by the defendant the same in principle, and did it operate to accomplish the same results as the one manufactured by the plaintiff?

Answer. I so regarded it. I think there could not be any two opinions about that.

Question 6. Did the change made by the defendant in the mould board as you have described it materially alter it so as to change the principle and its operation from what it was before?

Answer. I never saw the mould board on Mr. Starke's plow in operation, but I should not consider it as efficient to accomplish the purposes designed as it was before the shape was changed.

Question 7. Did the mould board, as changed, involve the same principle and operate to accomplish the same results as the one made by the plaintiff, whether in a greater or less degree, than the one first manufactured by the defendant?

Answer. The object sought to be accomplished by both parties were doubtless the same, but I should regard the mould board as first made by Mr. Starke as much more efficient for the purpose than the last. I think the principle involved was the same, but it was carried out more efficiently by Mr. Watts, especially after the change made in the mould board of Mr. Starke.

Question 8. Was this small mould board, as an attachment to the Watt plow, regarded by farmers as a useful improvement in plows, and did it enhance the popularity and increase the value and sales of said plow?

Answer. It was regarded by the farmers as a very great improve-

ment, and I think largely increased the popularity and the sale of the one horse size, to which it was adapted.

Cross-examined by defendant in person.

Cross question 1. You have stated that you were a partner of the plaintiff, Mr. Watt, in 1869, the date of the patent marked C, in which this mould board is claimed to have been patented, continuing as such patent for four years—did you not in that time become familiar with the construction of many different plows?

Answer. I did.

Cross question 2. Were not most all plows in use at that time, and for ten years prior to that time, constructed with mould boards?

Answer. Of course.

Cross question 3. Was this mould board, numbered 10, a new mould board entire, or was it made by simply taking away a part of the old complete mould board and not a change in form and shape?

Answer. The mould board numbered 10, in its front or cutting lines, is identical with the full sized mould board, and is reduced in its size and shape to accomplish the object claimed for it. In effect, it is a section of the full sized mould board. It is not altered in any particular except in the outer back line, which could be accomplished by cutting the larger mould board down to the size and shape of mould board No. 10.

Cross question 4. Is the face or turning surface of this small mould board in any way different from the same portion of the old full sized mould board?

Answer. The small mould board is identical with the old full sized mould board to the extent to which it goes.

Cross question 5. Is not this mould board in your opinion simply the substitution of one mechanical equivalent for another?

Answer. It is certain that the mechanical effect accomplished by the small mould board is entirely different from that accomplished by the larger, and to that extent it might be said to be the substitution of one equivalent for another.

Cross question 6. Please state what in its operation is the advantage claimed for this small mould board by farmers?

Answer. It is valued by the farmers as a cultivating implement ensuring deep tillage, a lifting and pulverization of the soil with only partial subversion.

Cross question 7. Do not the shovel plow and coulters with small mould boards or wings attached pulverize and lift the soil and only partially subvert it?

Answer. They do, but with not the same efficiency; and the use of these implements would involve a cost which would be avoided

by the use of an implement that could be employed both for cultivation and as a turning plow, which the Watt plow with the small mould board is.

Cross question 8. Did you ever use shovel plows for opening corn rows, and do they not leave the base of the open furrow pulverized and soft for the reception of the grain?

Answer. I have used shovel plows for that purpose, but they do not leave the base of the open furrow pulverized and soft to any desirable extent.

[The counsel for the plaintiff here insists that while the witness was answering the above question, the defendant said to him "to save another question, state if it does not to the extent of the Watt plow," to which the witness replied, "by no means," which answer plaintiff by his counsel insisted should be written down, but the commissioner being busily engaged writing did not hear it and therefore could not do so. When the plaintiff's counsel asked the defendant to state to the commissioner whether or not he did make this request to the witness, to which the witness made the above answer, and the defendant declined to answer.]

Cross question 9. Did you hear the above question, and make the answer as indicated?

Answer. Well, I am not prepared to say that I did hear it, but I am prepared to make the statement that, in my opinion, the shovel plow is by no means as efficient as an implement to open and pulverize the soil for the reception of seed as the Watt plow with the small mould board attached. I think I did make such a remark as the one indicated, but from the confusion at the moment I am not prepared to say what was the occasion of the remark.

Cross-question 10. Is this small mould board used on any other than a one-horse plow?

Answer. Yes, sir. It is not in general use on any other plow, but has been used on the two-horse size. I think one man in Georgia used as many as eight of the two-horse size with the small mould board attached. The use was as a sub-soil plow and for pulverizing deeply the seed bed of cotton rows and the formation of the list or bed on which the seed is deposited. I am under the impression that some few farmers use the two-horse plows with the small mould board in the first working of corn, but this I think has been done to a very limited extent.

Cross question 11. Please look at the patent, marked J. H. Gooch's patent, here produced, and examine small mould board A in figure 3, and say whether, in your opinion, this mould board will pulverize and disintegrate the soil, and allow a considerable portion to fall back into the furrow behind?

Answer. I never saw the device before, but if I comprehend it,

I should regard it as a very inefficient implement. I cannot see how the portion of the soil could fall back in the furrow unless the plow was running at a greater depth than the top line of mould board A, in which case much of the soil lifted would necessarily fall back into the furrow.

Cross question 12. Does an acute angled mould board or an obtuse angled mould board throw the dirt further, and more apt to cover the small plant?

Answer. I think that would depend to some extent on the length of the acute angled mould board. If the length were the same, the obtuse angled mould board would throw the dirt to the greater distance, and be more apt to cover the plant.

Cross question 13. Did Mr. Watt, during your partnership with him, claim that I had infringed his patent of 1869 in any other particular than that of the small mould board in controversy?

Answer. That was the most important matter, but I have also the impression on my mind that he also claimed that there was an infringement in the manner in which the handles were attached to the standard. I recollect of nothing else.

Re-direct examination by plaintiff's counsel.

Question 1. What is an acute angled, and what is an obtuse angled, mould board?

Answer. An acute angled mould board, as applied to plows, are those which recede at a sharp angle from the land side of the plow, and the obtuse angled board is one in which the angle is greater and presents a more abrupt surface to the earth.

Question 2. Mathematically speaking, can there be such a thing as an obtuse angled mould board?

Answer. The mathematical definition of an obtuse angle is an angle greater than a right angle, and a mould board which would present such an angle would be entirely nondescript and valueless.

Question 3. Is there not another angle formed by the general outline of the mould board in its departure from the plane of the base of the plow upwards toward the beam of the plow?

Answer. There is.

Question 4. May not the nature of that angle also affect the manner in which the plow throws the dirt in operating?

Answer. The efficiency of the plow will depend very materially on the adjustment of that angle, not only as to ease of draught, but as to the facility of turning the soil.

And further deponent saith not.

W. C. KNIGHT.

There being no other witness produced or offered, the taking of these depositions is here closed.

M. F. PLEASANTS,
Examiner.

I, Matthew F. Pleasants, appointed special examiner in the above entitled cause by an order of court entered therein on the 7th day of March, 1876, a copy of which is hereto annexed, do hereby certify that the foregoing depositions of George Watt, William S. Sumner, Emmett C. Knight, Samuel S. Sumner, Jr., and William C. Knight, were taken, subscribed and sworn to before me, and by me reduced to writing in their presence at the place and times specified in the captions thereto, in pursuance of notice duly served and hereto annexed. And I further certify that I am not of counsel to either of the parties in the said suit, nor in any way interested in the result thereof.

Given under my hand this 25th day of March, A. D. 1876.

M. F. PLEASANTS,
Sp. Examiner.

Notice to take Depositions.

To P. H. Starke, Esq.:

Take notice that I shall, on the ninth day of October, 1876, at my office in the custom-house, in the city of Richmond, between the hours of 6 A. M. and 6 P. M. of that day, proceed to take the depositions of Isaac Davenport and others, to be read as evidence in behalf of the complainant in a certain cause now depending in the circuit court of the United States for the eastern district of Virginia, wherein you are defendant and George Watt is complainant, and if from any cause the taking of the said depositions be not commenced on that day, or if commenced be not concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

Respectfully yours,

M. F. PLEASANTS,
Sp. Comm'r.

In the circuit court of the United States for the eastern district of Virginia:

Examiner's Office, Richmond, October 9th, 1876.

George Watt
vs.
P. H. Starke,
} In equity.

Present—Geo. P. Haw, counsel for complainant; P. H. Starke, defendant in person.

Depositions of witnesses taken before me, M. F. Pleasants, special examiner, in pursuance of a notice hereto annexed, to be read as evidence on the hearing of the above entitled cause:

William Haw, being duly sworn, deposes and says, in reply to questions by plaintiff's counsel:

[The same objections are made to the taking of these depositions as were made to the taking of those heretefore certified to the court on the 25th day of March, A. D., 1876.]

Question 1. What is your age, occupation and place of residence?

Answer. Age, 36; occupation, machinist; place of residence, New Kent county, Virginia.

Question 2. Have you had any experience in the manufacture and working of ploughs; and if so, for how long?

Answer. I have. I have been making them for about six years, and have been working them ever since I was a boy.

Question 3. Have you any acquaintance with the ploughs manufactured by the complainant and defendant in this cause, and specially with the plaintiff's patent, marked exhibit "C," with the bill, the first issue of which is dated November 26, 1867, and the re-issue dated August 17, 1869; and with the defendant's patent dated August 21, 1860, commonly called the Southern plow?

Answer. I have.

Question 3. State if you know whether the defendant has, since the date of the plaintiff's patent referred to in the preceding question, manufactured and put into use any portion of invention or improvement in plows claimed by the plaintiff in his said patent; and if so, state what portion?

Answer. He has. He has used the small mould board referred to in plaintiff's patent.

Question 4. Do you refer to figure 10 in the patent, specification 9?

Answer. I do.

Question 5. Was the mould board manufactured by the defendant the same in principle, and did it operate to accomplish the same results as the one manufactured by the plaintiff?

Answer. It is, and it accomplishes the same results.

Question 6. Do you know whether the defendant at any time made a change in the shape of his mould board?

Answer. Yes, sir, he did.

Question 7. Do you think the change made by the defendant materially altered it so as to change the principle and its operation from what it was before?

Answer. I do not. The change was very little.

Question 8. Did the mould board as changed involve the same principle and operate to accomplish the same results as the one made by the plaintiff, whether in a greater or less degrec?

Answer. I think it accomplished the same results, but in a less degree.

Question 9. Was this small mould board as an attachment to the Watt plow regarded by farmers as a useful improvement in plows, and did it enhance the popularity and increase the value and sales of said plow?

Answer. Yes sir, it enhanced the value of the plow, and was regarded by farmers as one of the best features of the plow. I think it increased the sales, as I heard many people say they bought it on account of its advantages for weeding purposes and for opening to plant seed in the furrow.

Question 10. Was this improvement in plows, made and patented by George Watt, a new or novel invention of his, so far as your acquaintance with plows enables you to speak?

Answer. It was.

Question 11. Are you related to either of the parties in this cause, or have you any interest, direct or indirect, in its issue?

Answer. I am a nephew of Mr. Watt, and a cousin of Mr. Starke's wife. I have no interest whatever in the issue of the cause.

Question 12. Was this mould board regarded by manufacturers of plows sufficiently valuable as to induce them to imitate it?

Answer. It was.

And further deponent sayeth not.

WILLIAM HAW.

Isaac Davenport, being duly cautioned and sworn in reply to questions by complainant's counsel deposes and says:

Question 1. What is your age, occupation and place of residence?

Answer. My age is 48, my occupation, machinist and farmer, my place of residence, King William county.

Question 2. Have you had experience in the manufacture and working of plows, and if so, for what length of time?

Answer. I have sir. I have been making plows since 1845. I have been working them off and on all my life.

Question 3. Have you any acquaintance with the plows manufactured by the plaintiff and defendant in this cause, and especially with the plaintiff's patent originally issued November 26, 1867, the re-issue of which is dated August 17, 1869, and with the defend ant's patent dated August 21, 1860, commonly called The Southern Plow?

Answer. I have sir.

Question 4. State if you know whether the defendant has, since the date of the plaintiff's patent referred to in the preceding question, manufactured and put into use by sale or otherwise, any portion of the invention or improvement in plows claimed by the plaintiff in his said patent, and if so, state what portion?

Answer. Yes. He has put into use the weeding mould board.

Question 5. Please point that out on the plaintiff's patent marked "C" with his bill, now shown you?

Answer. It is figure 10.

Question 6. Was the mould board manufactured by the defendant the same in principle, and did it operate to accomplish the same results as the one manufactured by the plaintiff?

Answer. Yes, sir.

Question 7. Do you know whether the defendant at any time made a change in the shape of his mould board?

Answer. Yes, sir, he made a change in it.

Question 8. Do you think the change made by the defendant materially altered it, so as to change the principle, and its operation from what it was before?

Answer. I think not.

Question 9. Did the mould board as changed involve the same principle and operate to accomplish the same results as the one made by the plaintiff?

Answer. It did.

Question 10. Was the small mould board as an attachment to the Watt plow patent, marked "C," with the bill, regarded by the farmers as a useful improvement in plows, and did it or not enhance the popularity and increase the value and sales of said plow?

Answer. It was regarded as a great improvement by the farmers, and increased the sales very considerably I think the value of the plow, as a weeding plow, was very greatly increased.

Question 11. Was this improvement in plows made and pat-

ented by George Watt, a new or novel invention of his, so far as your acquaintance with plows enables you to speak?

Answer. Yes, sir, I think it was.

Question 12. Was there any such feature as the one involved in this small mould board used on any plow that you ever saw, prior to its being patented by George Watt?

Answer. I never did.

Question 13. Was the mould board involving this principle used on the Southern plow patented by the defendant in 1860, prior to the date of the plaintiff's patent?

Answer. I don't think it was, I never saw it.

Question 14. Is it probable that if such had been the case you would have known it?

Answer. I think I should.

Question 15. Was your position and business such as to give you a very general acquaintance with all the plows used in Eastern Virginia?

Answer. Yes, sir. I was engaged from the first of the year 1867 with Mr. Watt in the manufacture of his plows and patterns, until the last of the year 1869. I was engaged in mechanical business from 1855 on my own account until I went with Mr. Watt in 1867, manufacturing plows and farming implements, as well as farming in King William county, and have been engaged ever since 1869 in the same business, and in the same county. During that time I had the opportunity of seeing all the plows manufactured in the country.

Question 16. Are you related to either of the parties in this cause, or have you any interest direct or indirect in its event?

Answer. Not at all, sir. No interest whatever, except a warm friendship for both parties.

And further deponent sayeth not.

I. DAVENPORT.

There being no other witness produced or offered, taking of these depositions is here closed.

M. F. PLEASANTS, Examiner.

I, Matthew F. Pleasants, appointed special examiner in the above entitled cause by an order of court entered therein on the 7th day of March, 1876, hereby certify that the foregoing depositions of William Haw and Isaac Davenport were taken, subscribed and sworn to before me, and by me reduced in writing in their presence at the place and time specified in the caption thereto, in pursuance of notice duly served and hereto annexed. I further certify that Robert Ould, counsel for the defendant, appeared before said

depositions were closed and interposed no objections thereto, except as hereinbefore stated. And I further certify that I am not of counsel to either of the parties in the said suit nor in any way interested in the result thereof.

Given under my hand this 9th day of October, A. D., 1876.

M. F. PLEASANTS,
Sp. Examiner.

United States of America,
Eastern District of Virginia—ss.

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true copy of all the depositions taken in the cause therein named, and that the said depositions were filed before, and read on the final hearing of said cause in this court, and were not included in the record thereof sent to the supreme court of the United States.

Witness my hand and the seal of said court this 8th day of December, 1879.

{SEAL.}

M. F. PLEASANTS,
Clerk.

Circuit Court of the United States.

GEORGE WATT vs. PATRICK H. STARKE.

ARGUMENT FOR APPELLANT BY JOHN A. MEREDITH.

Circuit Court of the United States.

GEORGE WATT vs. PATRICK H. STARKE.

Argument for Appellant by John A. Meredith.

In 1870 George Watt filed in the circuit court of the United States for the eastern district of Virginia, against Patrick H. Starke, a bill in equity, setting forth that he was the first inventor of certain improvements in plows of great public utility. Wishing to obtain an exclusive property in said inventions and improvements he applied to the commissioner of patents for letters patent, filing the proper specifications and descriptions in writing, explaining the principles of said invention, and the mode of its application, and accompanied the same with drawings and references duly signed and attested, and models filed. Letters patent were issued to him, dated December 9, 1856, and a copy thereof filed with his said bill marked "A."

The bill further shows that said complainant made further improvements and inventions in plows, and after taking the steps required by the acts of Congress the commissioner of patents issued to him for said improvements letters patent, dated February 9th, 1858. Afterwards the complainant delivered, according to law, an amended specification of his said last mentioned improvements. This amended specification was accompanied with drawings and references duly signed and attested, and proper models, and filed in the patent office and annexed to said last mentioned letters patent. Afterwards, on August 2d, 1859, new or re-issued letters patent were duly obtained by complainant for said improvements, a copy of which marked "B" was filed with said bill.

The bill further shows that the complainant made certain other improvements in plows of great public utility, and that he was the first inventor thereof. That he took the necessary steps to obtain

letters patent therefor from the commissioner of patents, as prescribed by the statutes passed by Congress, and letters patent were duly issued to him, dated November 27th, 1867. These letters patent were duly surrendered and new letters patent issued to complainant for said invention, upon an amended specification and description, that said amended specification was accompanied, as the original one had been, with drawings and references duly signed and attested and annexed to the last named letters patent, proper models were duly filed. Afterwards, on August 27th, 1869, the complainant obtained a new patent, by letters patent, for the last mentioned invention; by which said last mentioned letters patent there was granted to the complainant for the term of seventeen years from the 26th November, 1867, the exclusive right of making, using and vending to others to be used, the improvements last aforesaid. A copy of the letters patent last aforesaid, marked "C" were filed with said bill.

The bill charged that the complainant made and sold plows, made according to said improvements, and so continued to make and sell them at a profit until the defendant, without the leave, consent or agreement of the complainant, at divers times until the present time, made, used and vended to others to be used, numbers of plows, which imitate and resemble the improvements of the complainant, in violation of his letters patent, and thereby infringed the same. The bill then propounds numerous interrogatories and concludes with the prayer that the defendant be required to account for the profits he had so made; that he be enjoined from further infringements of the complainant's letters patent, and for general relief.

Shortly after filing his bill, the complainant filed the affidavits of himself, Rouse and Sumner to prove that the defendant had infringed his letters patent.

On the 18th March, 1871, the defendant demurred to the bill, and on the same day, with leave of the court, filed his answer and certain exhibits and the complainant replied generally to the answer.

It will be seen at page 31 of the record, the complainant admitted that defendant had not infringed patent B, and only claimed that he had infringed specifications, 7 and 9, of patent "C;" and at page 35 of the record, the defendant further admits that speci-

fication number 7 was too broad, and entered a disclaimer to that part of the specification relating to the handles of the plough attached to the landside.

At the October term, 1875, the defendant filed an amended answer, and in it denies that he has infringed any of the specifications of patent C, especially the claim numbered 9, in said letters patent. He averred that complainant was not the inventor of the improvements described in specifiations 7 and 9, and that they had been in use and on sale more than two years before the complainant's application for his said original or re-issued patent was made.

On the 7th April, 1876, it was ordered by the court, of its own motion, that certain issues, specified in the order, be tried before a jury at the bar of the court.

Prior to the trial, the defendant served the complainant with notice that at the trial he would introduce certain witnesses and offer in evidence certain patents and models for the purpose of proving that the complainant was not the inventor of the improvements claimed by him, and that they had been in use more than two years before the complainant made his application. The names of the witnesses and their residences are given, and the patents and models described in the notice.

On the 18th September, 1875, the defendant filed in the clerk's office a paper purporting to be a notice to the complainant that, on the trial of the case, he would offer in evidence a patent to J. C. Maltrop, dated May 10th, 1859, and a patent to R. B. Winston, dated December 1st, 1857, for the purpose of proving that the improvements claimed by the complainant, in specification number 7, of his patent "C," had been in use and on sale more than two years before the complainant filed his application. This notice was not served on the complainant or his counsel. It had the following endorsement: "And at another day to wit, on the 18th day of September, 1875, the following notice was filed in the clerk's office."

On the 22nd October, 1875, the defendant filed in the clerk's office a like paper, that on the trial of the case he would offer in evidence patents issued to James C. Maltrop, dated May 10th, 1859, to S. J. Olmstead, September 13th, 1864, to J. H. Gooch, dated May 8th, 1860, to J. T. Thompson, dated 26 June, 1860, to R. B. Winston, dated December 1st, 1857, and to W. E. Wormell,

dated August 28th, 1860, and others, for the purpose of proving prior use and discovery of the inventions claimed by the complainant in his re-issued patent of August 16th, 1869. This paper was not served on the complainant or his counsel, and had on it the following endorsement: "The following notice was filed in the clerk's office on 22nd day of October, 1875."

On the 7th April, 1876, the defendant filed in the clerk's office a like paper, that on the trial of the cause he would offer in evidence patents issued to said Gooch, Wormell, S. G. Olmstead, John S. Thompson and Jas. C. Maltrop and others, for the purpose of proving that the improvement claimed in specification nine of patent "C," mentioned in the bill, had been patented or described in some printed publication prior to the complainant's alleged invention. This paper was not served on the plaintiff or his counsel, and had on it the following endorsement: "And on the same day, to-wit: on the 7th day of April, 1876, the following notice was filed in the clerk's office."

On the 17th day of October, 1876, a jury was sworn and the cause tried. In the progress of the trial the counsel for the defendant offered in evidence patents issued to Maltrop, Olmstead, Gooch, Thompson, Wormell, and Winston, and proposed to examine the defendant in relation to them to show that the complainant was not the inventor of his improvements in plows, and that said improvements had been patented and in use before the complainant filed his application; but the complainant at once objected to their introduction before the jury and the examination of the defendant touching the same, upon the ground that no notice of the purpose to introduce said patents had been given to or served on complainant or his counsel.

The court overruled the objection and allowed the patents to be offered; thereupon the complainant excepted and filed his bill of exceptions, reserving his objections, which was signed and sealed by the court, and will be found at page 35 of the record.

After the evidence was closed on both sides the complainant offered three instructions, which were given without objection. The defendant then offered four instructions, which were objected to by the complainant, but the court overruled the objection and gave the said instructions; to which opinion of the court overruling said objection and giving said instructions the complainant

excepted and tendered his bill of exceptions, which was signed and sealed by the court, and will be found at bottom of page 35 of record.

Such is a statement of the case and of such facts as are necessary to understand

THE ERRORS ASSIGNED.

1. It was error in the court to have admitted in evidence before the jury the patents mentioned in the first bill of exceptions, and to have allowed the defendant to be examined to show that they contained the improvements described in the patent of the plaintiff, and that the plaintiff's improvements were in use before he applied for his patent. This evidence was objected to as soon as offered as illegal, because neither the plaintiff nor his counsel had been notified of the purpose of the defendant to offer the patents in evidence before the jury; and the sole question presented by this bill of exceptions for decision is, Was this evidence illegal for this reason?

This being a trial by jury of certain issues of fact, the proceeding is to be treated as an action at law, and the rules applicable to a trial at law are applicable to the trial of such issues.

In the trial of actions at law it is well settled that parties defendant, sued as infringers, are not allowed in an action at law to set up the defence of a prior invention, knowledge or use of the thing patented, unless they have given notice of such defence in writing thirty days before the trial, and have stated in that notice "the names of the patentees and the dates of their patents alleged to have been invented, and the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and when and by whom it had been used." 16 Stat., 208; Rev. Stat., sect. 4920; Roemer v. Simon, 5 Otto., 215; citing Seymour v. Osborne, 11 Wall., 516; Blanchard v. Putnam, 8 Wall., 420.

The *onus probandi* is on the defendant to show that the required notice has been given. He must produce the notice. *Phil. & Kent. R. R. Co.* v. *Stimpson*, 16 Peters, 459.

"Compliance with that provision being a condition precedent to the right of the defendant to introduce such evidence, under the

general issue, it necessarily follows that the *onus probandi* is on him to show that the required notice was given to the plaintiff thirty days before trial, and if he fails to do so, he cannot introduce any evidence to controvert the novelty of the patent." *Blanchard* v. *Putnam*, 8 Wall., 428.

Now has the defendant shown that he has given to the plaintiff the required notice? The bill of exceptions shows that no notice, containing the names of the patentees, whose patents were offered in evidence to the jury, were given to the plaintiff, or his attorney. It is shown that three papers, purporting to be notices, containing the names of three patentees, were filed with the clerk, but it is distinctly shown that they were not served on the plaintiff or his counsel, and that neither had notice of their being so filed with the clerk; and the question is, is the filing of such a paper with the clerk a compliance with the statute, which requires a notice in writing to be given to the plaintiff, or his attorney? Certainly not. The statute says, "having given notice in writing to plaintiff or his attorney," &c., this means actual notice served on the plaintiff or his attorney. The filing of a paper with the clerk, containing the names of the patentees, &c., &c., is not the required notice; it is not a paper which the adverse party is bound to take notice of; if it were a special plea, entered on the records of the court, the adverse party is bound to take notice of all pleadings; but this notice is a substitute for the special pleas, and the statute authorizing it, does not say it may be filed with the clerk and placed among the papers in the case, but the notice must be *given* to the plaintiff or his attorney; this means brought to their personal knowledge, and this can only be done by serving one or the other with a copy of the notice. The statute does not require the notice to be filed with the clerk. The notice need not be produced until the objection to the introduction of the patents as evidence is raised; and then the defendant produces his notice with proof of service on plaintiff. It is matter of proof and not of pleading. Just as you would do if a witness were objected to on the score of interest. The party offering him produces at the trial a deed releasing him from all interest and liability. It is this proof that restores his competency. So when patents are offered to show prior use and knowledge, they are not competent testimony, until proof that such notice as the statute requires has been

actually given to the plaintiff or his attorney. It must be shown that the plaintiff had notice; it is not enough to show that he might have acquired notice if he had searched among the papers in the case. The proof of notice is a condition precedent to the introduction of such evidence and must be shown to have been complied with.

If I am right in this view, then the court erred in allowing these patents to be offered in evidence to the jury, and the defendant to be examined to explain them. The case should be reversed and remanded for a new trial, because the court admitted illegal testimony to go before the jury. There are no witnesses to show in this case the prior knowledge and use. It appeared in *Roemer* v. *Simon* that there were other witnesses who proved prior use and knowledge. If there were such witnesses in this case it does not appear that their testimony was sufficient to establish the defence of prior use and knowledge. This illegal testimony may have turned the scale and led the jury to find a verdict against the plaintiff; and hence it should be reversed because this illegal testimony may, and doubtless did, influence the jury.

This case is the trial of issues out of chancery, and I have considered this illegal testimony as if the case had been an action at law. It is analogous to the proceedings in an action at law, and the notice required by the statute in such an action, is the notice that should be required in the trial of an issue out of chancery. But if the case is to be considered as a suit in equity, the rule with respect to the notice of prior use and knowledge is different. The defendant gives notice in his answer of the names of the patentees that will be relied on to prove prior use and knowledge. The regulation in equity suits is that defences of prior use and knowledge "may be pleaded in any equity suit for relief against an alleged infringement, and that proof of the same may be given upon like notice in the answer of the respondent, and with like effect." 16 Stat., Rev. Stat., 4,920. Roemer *vs.* Simons, 5 Otto 215.

If this case is to be considered as a suit in equity, then this regulation in equity suits is as fatal to the admissibility of the evidence objected to in the bill of exceptions as the rule of notice applicable to the trial of an action at law. For the defendant in his answers has not complied with above regulation, prescribed for

equity suits. In his original answer he does not mention the names of any patentees, and in his amended answer the names of these patentees are not mentioned, whose patents were offered in evidence on the trial and objected to and who are named in the bill of exceptions; they are not mentioned in the amended answer, and hence the notice in the answer required by the regulation in equity suits, was not given as required by this regulation. In either aspect of the case the required notice was not given, and hence the case should be reversed and remanded.

2. It was error to admit this testimony to show the state of the art in respect to the improvement in plows at and before the date of the plaintiff's invention. If it was admissible at all, it should have been admitted with the qualification, that it could only be considered by the jury for that purpose. It should have been confined to that object, and the jury instructed that they were only to consider it in connection with the state of the art at the date of the plaintiff's invention; but no such instruction or qualification was given. It went broadcast before the jury, and the second, third and fourth instructions of the defendant, at page 36 of the record, will show the use that was made of this testimony after it got before the jury in considering their verdict. They were expressly instructed that they might consider these patents and the illegal testimony accompanying their introduction in determining the questions, whether the plaintiff was the inventor of the improvements claimed by him, and whether there had been prior use and knowledge of said improvements. This shows that these patents and the accompanying testimony were not offered in evidence before the jury to show the state of the art, but to disprove the claim of novelty in the patent of the plaintiff. The admission of this testimony cannot be placed on this ground, and is therefore illegal and the verdict founded on it should be set aside.

3. The court erred in the instructions given to the jury. They are abstract and speculative propositions. The instructions should apply the law to the case and the jury be left to find the facts. The instructions given are the *dicta* of judges cited from certain cases and wrung from their contexts, and convey a wholly different meaning in the connection in which they are used from the meaning given to them in this case.

The first instruction is wrong in this: that it does not mention

the *results* produced by the plaintiff's machine as compared with the *results* produced by existing machines. The plaintiff's machine may not differ substantially from other machines and be a mere formal alteration of existing machines, yet, if the results produced be wholly different, it is a new invention, and not an imitation of an existing machine. In a comparison of two machines in order to deprive the one containing the last improvement of the feature of novelty, the *results* produced by the two machines must be *substantially the same in kind.* It was so held by Mr. Justice Washington in Gray v. James, Peter's Cir. C. R. 394, 397. In Winans v Denmead, 15 How., 330, Judge Curtis said: "It (the result) must be the *same in kind*, and effected by his mode of operation, in substance." In Davis v. Palmer, 2 Brock, 298, Chief Justice Marshall said: "If by changing the form and proportion a *new effect* is produced, there is not simply a change of form and proportion, but *a change of principle also.*"

Nor does the instruction refer to the *principle or mode of operation* of the plaintiff's plow as compared with existing plows; for if the *principle or modus operandi* of the plaintiff's plow is substantially different from that of existing plows, it possesses the features of novelty, and is an invention. The cases just cited sustain this view, and every case decided by this court since is in accordance with it. It will thus be seen that the instruction in directing the jury to compare the plaintiff's plow with existing plows omits to direct their attention to the *results to be produced* and *the principle or modus operandi* of the two sets of plows; and hence the instruction is not true as a legal proposition, and misled the jury.

The second instruction is in like manner liable to the objection that the attention of the jury was not called to the *principle or modus operandi* of the plaintiff's plow in comparing it with existing plows. Everything as stated in this instruction may be true; the end to be accomplished by the plaintiff's plow and existing plows may be the same, and the end may be accomplished by the same means substantially; yet, if the *principle or modus operandi* be different in the plaintiff's plow from that of other plows, it is not identical with them, but is an invention possessing the feature of novelty.

The third instruction is not sustained by the case cited from 13 Wall., 453. The principle settled in that case is this: "If what it (the original machine) performs is essentially the same, and its

structure and action suggest to the mind of an ordinarily skilful mechanic its adaptation to the same use as the second patent *by the same means*, this adaptation is not a new invention." The instruction omits the words *by the same means*, and thus states a proposition which is not law.

The fourth instruction is erroneous in this: It says "that the plaintiff's invention accomplishes *better results* through substantially the same means." Instead of saying *better results*, the instruction should have said, *substantially the same results in kind;* one machine may produce *better results* than another by the same means, and yet not infringe it, unless *the results were the same in kind.* I refer to what was said on this point in commenting on the first instruction, and the cases there cited.

It will be seen that each instruction institutes a comparison between the plaintiff's plow and existing plows, with a view to show identity; and in defining what constitutes *identity* in patents, each instruction omits a feature in the definition of *identity* essentially necessary to enable the jury to conduct the comparison; and hence each instruction is wrong and calculated to mislead the jury. On this question of *identity*, Judge Story, in Wyeth v. Stone, 1 Story's R. 273, said: "The material question, therefore, is not whether the same elements of motion or the same component facts are used, but whether the *given effect* is produced substantially by the *same mode of operation* and the same *combination of powers* (or *means*) in both machines."

In other words, to constitute identity, the *same effect in kind* must be produced substantially, by the same *means* or combination of powers, and by the *same principle* or *modus operandi.* Neither instruction contains this definition of identity, and hence each is wrong. Machine Co. v. Murphy 7 Otto 125.

I ask the court to reverse the decision and remand the case.

JOHN A. MEREDITH,
For Appellant.

NOVEMBER 8, 1879.

ADDITIONAL ERRORS ASSIGNED BY APPELLANT.

4. It is admitted that a motion for a new trial of the issue ordered by a court of equity must be made in that court. Johnson *v.* Harmon, 4 Otto 371; McLaughlin *v.* Bank, 7 How. 227. This was done in this case. The issue was tried at the bar of the court of equity. It was not sent to a court of law to be tried, but was tried by the court of equity which ordered it at its bar. At p. 31 of the record it will be seen that the court, sitting as a court of equity, ordered, "*that the following issues be directed to be tried before a jury at the bar of this court*," and at p. 32 of the record that the jury was sworn at the bar of *the court of equity* as the heading of the entry by the clerk and of any subsequent entry in the case plainly shows; and at page 34 of the record a like heading of the entry by the clerk shows that the *motion to set aside the verdict and grant him a new trial was made in the court of equity.* The court never sat as a court of law in any stage of the case, but the whole case, including the trial of the issue and the motion for a new trial, was before the court as *a court of equity.* Hence it was one and the same cause, before the same judge, sitting on the same side of the court. In Brockenbrough *v.* Spindle, 17 Grattan 29, speaking of an issue out of chancery tried at the bar of the court of equity, Judge Moncure, delivering the opinion of the court, said: "All the proceedings were conducted before the same court, and ought to be regarded as proceedings in one and the same suit. So regarding them, all the errors of said court, whether on its law or chancery side, committed in the suit, are subject to the supervision and correction of this court."

Motion having been made *in the court of equity* to set aside the verdict and grant a new trial of the issue, the court erred in overruling it. When illegal testimony has been admitted, it is impossible for the court to say whether it was the legal or the illegal testimony which led the jury to find the verdict. When legal testimony has been rejected, the court may say there was still testimony enough to justify the verdict. But it cannot tell whether the verdict is founded on legal or illegal testimony, if both are before the jury. Watkins *v.* Carlton, 10 Leigh 560; Harrison *v.* Rowan,

3 Wash, C. C. Rep. 580—same case 4 Wash. C. C. Rep. 37; Cleeve *v.* Gascoigne, Ambler 323. When the judge misdirects the jury, the verdict is always set aside. Not a single case can be found where the appellate court refused to set aside the verdict for misdirection. Boyden *v.* Moore, 5 Mass. 365.

What evidence is admissible to show the state of the art is clearly stated by Mr. Justice Swayne in Brown *v.* Piper, 1 Otto 41. "It consists of what was old and in general use at the time of the invention. It is used for three purposes and none other, to show what was old, to distinguish what was new, and to aid the court in the construction of the patent." In his notice at p. 27 of the record, the defendant says they were introduced for the purpose of proving that the plaintiffs' improvement had been in use more than two years before his patent was issued. This does not prove that it was old and in general use.

5. The court erred in dismissing the bill. The defendant offered no testimony in the chancery cause—not a deposition was filed by him. The verdict was the only ground on which the court could base its decree of dismissal, and the verdict was procured by the introduction of illegal testimony before the jury, and the misdirection of the judge on the law, as expounded in the instruction. Such a verdict being plainly wrong, could not warrant the court in dismissing the bill.

The plaintiff sustained his case by full proof. His depositions prove the plaintiff to be the inventor, and that the defendant had infringed his patent. The defendant did not take a deposition to rebut this testimony; nor does the answer deny the allegations of the bill, except by the averment of new and affirmative matter. And as a general replication was put in by the plaintiff, it cast the onus of proving these averments on the defendant. He took no depositions to sustain them. It was error in such a state of the proofs and pleadings to dismiss the bill.

This court having the whole case before it on appeal, on the authority of the cases cited above, will reverse the decree of dismissal, set aside the verdict and remand the cause.

JOHN A. MEREDITH,
for appellant.

IN THE

Supreme Court of the United States.

GEORGE WATT

vs.

PATRICK H. STARKE.

BRIEF OF APPELLEE.

IN THE

SUPREME COURT OF THE UNITED STATES.

WATT vs. STARKE.

BRIEF OF APPELLEE.

There are only two points raised by the appellant in this case.

1. Were the notices, which were filed with the clerk more than thirty days before the trial term, sufficient?

2. Were the instructions, given at the instance of the defendant, erroneous?

The notices are found on pages 27 and 30 of the record, and the instructions at page 36.

1. A preliminary question arises, however, upon this record. Can the exceptions, made in the court below on the trial of the issue, be considered by this court?

The case was a suit in equity. An issue was directed to be tried before a jury at the bar of the circuit court. On the return of that issue to the equity side of the court, no exceptions to the rulings of the court in the trial of the issue were made, or renewed against the correctness of the finding of the verdict, and consequently no opinion on them has ever been rendered by the circuit court sitting in chancery. Neither was there any motion for a new trial made to the court which directed the issue. This appeal being only from a decree on the equity side of the circuit court, the exceptions taken at the trial of the issue are not before this court. McLaughlin vs. Bank of Potomac, 7 Howard, 220. In that case, this court said that the appellate court "cannot

express any opinion on matters in any other court or side of the court, than that appealed from."

Brockett vs. Brockett, 3 Howard, 691, sustains the same principle, even where the same judge sits in both proceedings.

If a chancellor is not bound by the verdict on the issue, but may decree adversely to it, it is clear that no question, except the propriety of the decree, can come before the appellate court. But there is no evidence in this record to show that the dismissal was improper, even if the rulings on the issue were erroneous.

2. But insisting upon the point just made, the appellee, in answer to the brief of the appellant, further says, that the ground of objection to the introduction of the patents mentioned in the bill of exceptions, is that no notice of the purpose to introduce said patents was given to or served on the plaintiff or his attorney, but that notice of such purpose was simply filed with the clerk amongst the papers of the cause and the date of said filing endorsed by the clerk on the notices.

It will be observed that four of the patents objected to, to wit: the patent of the Dixie plow to P. H. Starke, the patent to J. Rich, the patent to C. Maltrop, and the patent to R. B. Winston, are named in the answer or in the notice appearing on page 26, which was duly served upon the appellant's counsel.

The filing of the notices with the papers of the cause is a sufficient compliance with the requisites of the statute as to notice.

Neither the statute of 1836 or 1870 requires the notice to be *served* upon the complainant or his counsel. Both of them require only that the notice shall be "given." Filing the notice with the papers in the cause is giving notice. It was the duty of the complainant or his counsel to examine the papers and proceedings in the cause, and where inquiry is a duty, the party bound to make it is affected with all the knowledge which he would have got had he inquired.

Cardova vs. Hood, 17 Wall., 1.
Wise vs. Allis, 9 Wall., 737.

It is true that *notice* of *proof* may be given in a special plea in an action at law, or in the answer in a suit in equity, but the defendant is

not obliged to do so. He may plead the general issue at law, or make a general denial in equity, and give the notice of proof required by the statute, thirty days before trial.

Phillips vs. Comstock, 4 McLean, 525.
Evans vs. Eaton, 3 Wheat, 454.
Grant vs. Raymond, 6 Peters, 218.
Curtis on Patents, sec. 358.
Moore vs. Marsh, 7 Wall., 420.
Railroad Co. vs. Dubois, 12 Wall., 47.
Gould vs. Reese, 15 Wall., 187.
Teese vs. Huntington, 23 How., 2.
Seymour vs. Osborn, 11 Wall., 516.

So the defendant may plead the special defences either at law or in equity, and give *notice of the proofs* which sustain the defence thirty days before trial. Defence is one thing—the notice of the proofs which sustain the defence is another. There is no authority which requires the notice of the proofs to appear either in plea or answer. There may be dicta which declare that in a suit in equity *the defence* must appear in the answer; but there are no authorities which declare that *the notice of the proofs* must also appear in the answer. But whatever may be the fact as to suits in equity in the strict sense, it is admitted by the appellant that the proceeding here, being a trial by jury of certain issues, is to be treated as an action at law. The right to give the notice is not denied. It is only the form of service which is objected to. In the case at bar the novelty of the alleged improvement was denied in both the original and supplemental answers, and especially in the latter the said improvement was alleged to have been in public use and on sale in the United States for more than two years before the appellant's application. The amended and supplemental answer also denies that the appellant was the original and first inventor or discoverer of any material or substantial part of said alleged improvement, but that on the contrary, others invented said improvement and had knowledge of it before the appellant. The names of the persons who made, used and sold said alleged improvement, as well as the place where it was made, used and sold, and the names of the persons who invented and had a knowledge of said improvement before

the appellant, are given in the amended answer, filed by leave of the court. Subsequent to the original answer, a notice was filed, stating the special *proofs* which would be offered to sustain the *defence* in that answer, which notice was served upon the appellant's counsel. After the amended and supplemental answer was filed, other notices were filed stating the special *proofs* which would be offered to sustain the *defences* set up in the amended answer. The patents objected to are named in these notices, some of them being mentioned in the notice given under the original answer, and some in the notices given under the amended answer.

As between actual service and filing notice in the papers of the cause, the latter is preferable, because it was intended by the statute that the notice should appear in the pleadings or in the record. Under the statute, the facts mentioned in the notice canstitute a defence, and quoad that defence, the notice should be a part of the record. Under the statute it may be said that the notice is a part of the pleadings, and as much effect ought to be given to the filing of it, as to the filing of the general issue, a special plea, or an answer. It is not denied in the appellant's brief that the general issue, or special plea, or answer, when filed as this notice was, would be notice to the campliant. If the notice may be regarded as a part of the pleadings under the statute, why make this distinction between it and the other pleadings? Bates vs. Coe, 8 Otto, 47. Reckendorfer vs. Faber, 2 Otto, 347, 354.

3. But if the filing of the notie is not per se notice to the complainnant, will it not be deemed to imply notice, when nothing appears in the record which tends to show that the complainant or his counsel did not have actual notice and information, and that, too, by means of this filed notice? There is no affidavit, not even a statement that the complainant was surprised by the offered patents, or that he did not see or read the filed notice. The statute is silent as to the means of communicating information of the proofs. Before the court would reject this filed notice as a means of conveying information, would not they at least require some proof to be found in the record, that the complainant or his counsel was not in fact informed by the notice of the proofs of defence contained in it?

The record shows a state of facts which, like constructive notice,

raises a legal inference of so high a nature as to be concluive at least unless disproved. The appellant is in error in his brief when he says it is distinctly shown that neither the plaintiff or his counsel had any information that the notices were filed with the clerk. The record is silent on that point. The appellant is also mistaken in saying that there were no witnesses to show prior knowledge and use. The fact is directly the reverse, and so appears from the complainant's first instruction. The names of the witnesses examined appear in the answers and notices; and the bill of exceptions refers also to depositions taken.

4. Moreover the four patents introduced under the filed notice are not set out in the record. Will the court reverse when it does not appear that the complainant was or could have been injured by their introduction? Non constat but that it would appear if they were set out that they were entirely immaterial. It is well settled that before a party can complain in an appellate court of the introduction of evidence in the court below, he must show by the evidence itself that he may have been injured.

5. But if we are in error as to all we have said on this point, it is clear that the patents could properly have been given in evidence without any notice, to show the state of the art in respect to improvements in the manufacture of plows at and before the date of the plaintiff's invention.

Vance vs. Campbell, 1 Black., 427.
Westlake vs. Carter, 4 Off. Gaz. Pat., 636.
Curtis on Patents, sec. 380 a.
Brown vs. Piper, 1 Otto, 41.
Tucker vs. Spalding, 13 Wall., 463.
Roemer vs. Simon, 5 Otto, 210.
Dunbar vs. Myers, 4 Otto, 198.

Even if the patents thus introduced to show the state of the art, also showed the improvement claimed was patented or invented by others before him, surely such a fact would not make that to be incompetent evidence, which otherwise would be competent. It is a familiar rule of patent law that all patents which are the subject of controversy are to be construed with reference to the state of the art at the time of the

invention. Pitts vs. Wimple, 2 Fisher, 10. The counsel of the appellant did not ask the court to instruct the jury that they could only consider the patents in connection with the state of the art. He objected to the introduction of the patents for any purpose, and the court was obliged to reject the motion.

6. As to the matter of instructions, we contend that no valid exception can be taken to them. The complainant's prayers were granted, and they are to be taken in connection with the defendant's instructions. The language of the defendant's instructions is that used by Federal courts of the highest character. In most of the instructions the identical language of this court was used. In addition to the authorities cited in the record, we refer to Horton vs. Maborn, 104 E. C. L., 437; Machine Co. vs. Murphy, 7 Otto, 125; Imlay vs. Norwich R. R. Co., 4 Blatch., 227; McCormick vs. Talcott, 20 How., 402; Blanchard vs Beers, 2 Blatch., 411.

But neither the patents introduced or the evidence submitted in the cause before the jury are set out by bill of exception or otherwise. If, therefore, the instructions given would suit any state of facts, they cannot be declared erroneous. That they would suit some state of facts is very clear, because the language used is that of this court. This court cannot say that they did not suit the case before the circuit court, because it is not certified what was the case as it appeared before the jury when the instructions were given.

Ro: Ould
for Appellee.

IN THE

SUPREME COURT OF THE UNITED STATES.

WATT vs. STARKE.

Supplemental Brief of Appellee.

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1. The appellant in his supplemental note contends that the issue was tried at the bar of the court of equity.

This cannot be, because under the constitution of courts at common law, and under our constitution which recognises the distinction between law and equity, an issue of fact could not be tried before a jury, except on the law side of a court. The rules of law in regard to evidence, its admissibility and its weight, and in regard to the examination and cross-examination of witnesses govern the proceedings, except so far as they may be otherwise regulated by the order of the court directing the issue. Black vs. Lamb, 1 Beasley, 123.

The equity powers and modes of procedure of the courts of the United States are those which the high court of chancery in England under its judicial capacity as a court of equity possessed, exercised and pursued at the time of the formation of the constitution of the United States. State of Pennsylvania vs. Wheeling Bridge Co., 13 How., 563.

It is true that issues now may be tried before a court of chancery in England, but that is by virtue of the 21 and 22 Victoria, chapter 27, called Lord Cairns' Act, which first conferred the power on that court

and gave to it for that purpose the jurisdiction, powers and authority of a superior court of law.

In Walker vs. Dreville, 12 Wall., 440, this court said that it would look at the essential nature of the proceeding to ascertain whether it belonged to law or equity. So in cases coming from States where a petition or complaint initiates the proceedings, the court will look into the nature of the case to see whether it belongs to law or equity.

In Woodworth vs. Rogers, 3 Woodbury vs. Minot, p. 150, Judge Woodbury said that a trial by jury can only be had in a court of law.

Blackstone, book 3, p. 452, says that no jury can be summoned to attend a court of equity.

In Black vs. Shreve, 2 Beasley, 500, Judge Vandyke says the chancellor has no power to bring a jury into his own court, but is forced when he needs their aid, to seek it through the only channel in which their verdict can be obtained. In exparte Story, 12 Peters, 343, this court said that a bill of exceptions is altogether unknown in chancery practice.

2. The appellant refers to the record in this case. It says that the judge sitting in equity directed an issue "to be tried before a jury at the bar of this court," which is the same as if the record said that the issue was to be tried before a jury at the bar of the circuit court; because the court wherein the order was made was a circuit court. It was an "issue," a word peculiarly if not exclusively applicable to a proceeding in a court of law. It was to be tried before a jury, a tribunal only known to a court of law, unless a statute otherwise provides.

It is true that the clerk in entitling the cause throughout all the proceedings, enters it as Watt vs. Starke in equity. He did so because the suit belonged to the equity side and must be finally disposed of there. The suit itself was never out of the equity court, while it is true also that the issue was in a different jurisdiction.

The course of the appellant in taking exceptions during the trial of the issue shows that he regarded himself as being in a court of law.

See Apthorpe vs. Comstock, 2 Paige, 488.

Bullen vs. Mitchell, 2 Price, 399.

Black vs. Lamb, 1 Beasley, 113.

In Johnson vs. Harmon, 4 Otto, 371, there was an issue, a bill of

exceptions taken during the trial of the issue, and the exceptions brought to the notice of the chancellor and overruled by him. After that a final decree was made and from that an appeal was taken. Upon that appeal all the evidence in the cause, including that upon the trial of the issue, was before this court. Yet even upon that state of facts, this court said that a bill of exceptions cannot be taken on the trial of a feigned issue directed by a court of equity, or if taken, can only be used on a motion for a new trial made to said court; and that a decree in equity therefore when appealed from, does not stand or fall according to the legality or illegality of the proceedings on the trial of a feigned issue in the cause; for the verdict may or may not have been the ground of the decree. The court further said that it was the duty of the Chancellor to decide upon the whole case, pleading, evidence and verdict, giving to the latter so much effect as it is worth, and that the appeal to this court must be decided in the same way, namely upon the whole case, and cannot be made to turn on the correctness or incorrectness of the judge's rulings at the trial of the feigned issue.

3. But if the pretension of the appellant, that the issue was tried before the judge sitting in equity, be true, it does not help his case. Even then the trial was for the purpose of informing his conscience, and aiding him to come to a proper conclusion. He could make a decree contrary to the verdict, if, in his judgment, the law and the evidence so required. Because of this power in the court the decree does not stand or fall according to the legality or illegality of the proceedings on the trial of the feigned issue, whether it be tried by one jurisdiction or another. This consequence appertains as much to a verdict rendered by a jury on the equity as upon the law side. The side is immaterial, because the verdict, on whatever side rendered, does not require the chancellor to make a decree in accordance with it, and, therefore, an appeal from the decree cannot be made to turn on the correctness or incorrectness of the judge's rulings at the trial of the feigned issue. The appeal must be decided upon the whole case, pleadings, evidence and verdict in the appellate court, just as the case was tried upon the same data before the chancellor. But here the evidence, which was before the judge when he tried the issue, whether you regard him as a common law judge or a chancellor, is not before this court and it